

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Williamsburg County
Tanya A. Gee, Circuit Court Judge

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S.C. SUPREME COURT

Lower Court Case No. 2015-CP-45-0037
Appellate Case No. 2016-000615

Robert Troy Taylor, #315084,

Respondent-Petitioner,

v.

STATE OF SOUTH CAROLINA,

Petitioner-Respondent.

**AMENDED SECOND SUPPLEMENTAL APPENDIX
VOLUME 1 OF 2**

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STATE OF SOUTH CAROLINA

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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM WILLIAMSBURG COUNTY
COURT OF GENERAL SESSIONS

GEORGE C. JAMES, JR., PRESIDING JUDGE

INDICTMENT NOS.: 06-GS-45-176

THE STATE.....Respondent,

v.

ROBERT TROY TAYLOR.....Appellant.

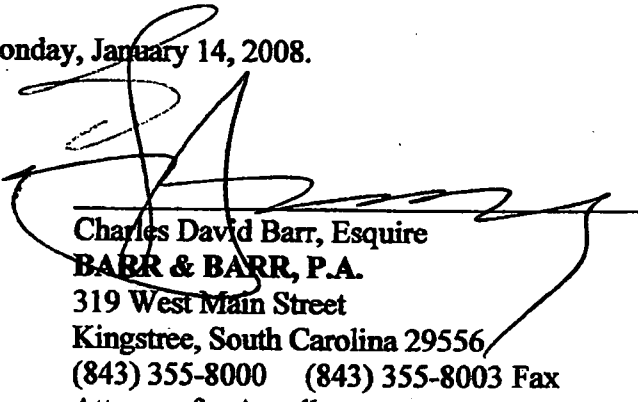
NOTICE OF INTENT TO APPEAL

TO: THE HONORABLE HENRY MCMASTER, ATTORNEY GENERAL:

Notice is hereby given that the Defendant intends and does hereby appeal his guilty verdict of July 12, 2007 and, the trial Courts denial of defense Motion to Reconsider. Notice of the Courts decision was received on Monday, January 14, 2008.

January 18th, 2008

Kingstree, South Carolina



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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM WILLIAMSBURG COUNTY
COURT OF GENERAL SESSIONS

GEORGE C. JAMES, JR. , PRESIDING JUDGE

INDICTMENT NO.: 06-GS-45-176

THE STATE.....Respondent,

v.

ROBERT TROY TAYLOR.....Appellant.

CERTIFICATE OF SERVICE

I certify that I have served the Notice of Intent to Appeal has been served, by mail, postage pre-paid to the following, on 18th day of January 2008 at the following addresses:

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January 18th, 2008

S/ Charles David Barr
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IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM WILLIAMSBURG COUNTY
Court of General Sessions.
The Honorable George C. James, Circuit Court Judge

Case No. 2006-GS-45-176

STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

ROBERT TROY TAYLOR,

APPELLANT.

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STATE OF SOUTH CAROLINA)
COUNTY OF WILLIAMSBURG) IN THE COUT OF GENERAL SESSIONS

THE STATE,)
PLAINTIFF,)
v.)
ROBERT TROY TAYLOR,)
DEFENDANT.)

WILLIAMSBURG COUNTY COURTHOUSE
TUESDAY, JULY 10, 2007 -
THURSDAY, JULY 12, 2007

BEFORE:

HONORABLE GEORGE C. JAMES, PRESIDING JUDGE.

APPEARANCES:

ASSISTANT SOLICITOR RONNIE SABB, ESQUIRE
ASSISTANT SOLICITOR KIMBERLY BARR
Attorneys for The State

CHARLES DAVID BARR, ESQUIRE
Attorney for Defendant

TAKEN BY MELISSA R. WINFIELD
CERTIFIED VERBATIM REPORTER

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First Jury Selection

Certificate of Service

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1 The Court: All right, Ladies and Gentlemen, the
2 process that we will follow is that your names are placed
3 into that wooden barrel in front of Ms. Williams and if
4 your name is called you are to come forward through the
5 gateway towards where Ms. Williams is seated and turn
6 around and face the back of the court room and we will
7 begin the jury selection process. Can the lawyers come
8 up for just a minute.

9 (Counsel approaches)

10 The Court: Ms. Barr and Mr. Barr, how many
11 alternates do you want, just one?

12 Mr. Barr: One is fine with me, Judge.

13 Ms. Barr: Judge, I think one will be fine.

14 The Court: All right.

15 Ms. Williams: Ladies and Gentlemen of the Jury, when
16 I call your name and number will you please come to the
17 front of my desk, face counsel and await further
18 instructions.

19 Juror Number 114, Reese Morris, Jr.

20 Ms. Barr: Present Mr. Morris.

21 Mr. Barr: Excuse this juror from the trial of this
22 particular case.

23 Ms. Williams: You may return to your seat, Mr.
24 Morris. Juror Number 146, Mary Smith.

25 Ms. Barr: Present Ms. Smith.

1 Mr. Barr: Please Excuse this juror from the trial of
2 this case.

3 Ms. Williams: You may return to your seat, Ms.
4 Smith. Juror Number 141, Jessie Scott.

5 Ms. Barr: Present Ms. Scott.

6 Mr. Barr: Seat Ms. Scott.

7 Ms. Williams: Have a seat to my right, Ms. Scott
8 in the petty jury box. Juror Number 103, David
9 McCutchen.

10 The Court: By the way Ms. Barr and Mr. Barr, just so
11 the record will reflect that all the motions that were
12 made in chambers have been reserved and I will rule on
13 those after the jury selection.

14 Ms. Barr: Present Mr. McCutchen.

15 Mr. Barr: Please excuse the juror from the trial
16 of this case.

17 Ms. Williams: You may return to your seat, Mr.
18 McCutchen. Juror Number 147, Doris Stalnaker.

19 Ms. Barr: Present the juror.

20 Mr. Barr: Please excuse Ms. Stalnaker from the trial
21 of this case.

22 Ms. Williams: You may return to your seat, Ms.
23 Stalnaker. Juror Number 162, Meredith Washington-Green.

24 Ms. Barr: Present Ms. Green.

25 Mr. Barr: Please excuse Ms. Green.

HEARING

5

1 Ms. Williams: You may return to your seat. Juror
2 Number 16, Jerry Brown.

3 Ms. Barr: Present Mr. Brown.

4 Mr. Barr: Please excuse Mr. Brown from the trial of
5 this case.

6 Ms. Williams: You may return to your seat, Mr.
7 Brown. Juror Number 50, Robert Fore.

8 The Court: Fifty?

9 Ms. Williams: Number 50.

10 Ms. Barr: Present Mr. Fore.

11 Mr. Barr: Please excuse the juror from this case.

12 Ms. Williams: You may return to your seat, Mr. Fore.
13 Juror Number 172, Cynthia Wilson.

14 Ms. Barr: Please excuse Ms. Wilson from the trial of
15 this case.

16 Ms. Williams: You may return to your seat, Ms.
17 Wilson.

18 Ms. Williams: Juror Number 176 Henry Pierce.

19 Ms. Barr: Present Mr. Pierce.

20 Mr. Barr: Please excuse Mr. Pierce from the trial of
21 this case.

22 Ms. Williams: You may return to your seat, Mr.
23 Pierce. Juror Number 44, Barbara Douglas McBride.

24 The Court: What is her name, again?

25 Ms. Williams: Number 44, Barbara Douglas McBride.

HEARING

6

1 Ms. Barr: Present Ms. McBride.

2 Mr. Barr: Seat the juror, please.

3 Ms. Williams: Have a seat to my right in the
4 petty jury box. Juror number 138 Artonya c. Scott.

5 Ms. Barr: Present Ms. Scott.

6 Mr. Barr: Seat the juror, please.

7 Ms. Williams: Have a seat to my right in the
8 petty jury box. Juror number 11, Sylvia Brickman.

9 Ms. Barr: Present Ms. Brickman.

10 Mr. Barr: Seat the juror, please.

11 Ms. Williams: Have a seat in the jury box to
12 my right. Juror number 24, Jeffrey Chandler.

13 Ms. Barr: Present Mr. Chandler.

14 Mr. Barr: Seat the juror, please.

15 Ms. Williams: Have a seat in the jury box to my
16 right. Juror Number 72, Bryan Haselden.

17 Ms. Barr: Present Mr. Haselden.

18 Mr. Barr: Seat the juror.

19 Ms. Williams: Have a seat in the jury box to my
20 right. Juror Number 82, Barbara Jones.

21 Ms. Barr: Present Ms. Jones.

22 Mr. Barr: Seat the juror, please.

23 Ms. Williams: Have a seat in the jury box to my
24 right. Juror Number 122, Wilson Nesmith.

25 Ms. Barr: Present Mr. Nesmith.

HEARING

7

1 Mr. Barr: Seat the juror.

2 Ms. Williams: Have a seat in the jury box to my
3 right. Juror Number 41, Rita Dollard.

4 Ms. Barr: Please excuse Ms. Dollard from the
5 trial of this case.

6 Ms. Williams: You may return to your seat, Mr.
7 Dollard. Juror Number 165, Dianne Weaver.

8 Ms. Barr: Please present the juror.

9 Mr. Barr: Seat the juror, please.

10 Ms. Williams: Have a seat in the jury box to my
11 right. Juror number 1 Pressley.

12 Ms. Barr: Seat the juror, please.

13 Mr. Barr: Swear the juror, please.

14 Ms. Williams: Have a seat to my right in the
15 petty jury box. Juror number 115, Sharon McDonald.

16 Ms. Barr: Present Ms. McDonald.

17 Mr. Barr: Seat the juror, please.

18 Ms. Williams: Have a seat to my right in the
19 petty jury box. Juror number 154, Rocky Thompson.

20 Ms. Barr: Present Mr. Thompson.

21 Mr. Barr: Please excuse the juror from the
22 trial of this case.

23 Ms. Williams: Please return to your seat.

24 Juror number 77, Judy Ivey.

25 Ms. Barr: Present the juror.

1 Mr. Barr: Please excuse the juror from the
2 trial of this case.

3 Ms. Williams: Please return to your seat.
4 Juror Number 75, Bennie Huggins.

5 Ms. Barr: Present the juror.

6 Mr. Barr: Seat the juror.

7 Ms. Williams: Have a seat to the right in the
8 petty jury box.

9 The Court: On the alternate one and two, is
10 that right Ms. Barr, Mr. Barr? One strike, two strike?

11 Mr. Barr: Yes.

12 Ms. Williams: Juror number 158, Rodney Tisdale.

13 Ms. Barr: Present Mr. Tisdale.

14 Mr. Barr: Seat the juror, please.

15 Ms. Williams: Have a seat to my right in the
16 petty jury box.

17 The Court: All right. Anything from the State
18 or the Defendant pertaining to the jury selection?

19 Ms. Barr: The State has a motion, Your Honor.

20 The Court: All right. Mr. Barr, anything from
21 the defense?

22 Mr. Barr: Nothing from the defense.

23 The Court: All right. Ladies and Gentlemen.
24 Those of you who have been selected for this particular
25 jury, I will ask you to go with the Bailiff to the jury

1 room. As I will explain to you ladies and gentlemen more
2 as the week progresses, from time to time it will be
3 necessary for us to take up matters outside of your
4 presence and that is not in any effort to hid anything
5 from you. It's simply the fact that the rules we go by
6 that are all published in the book that I will show you
7 probably during the course of the trial, certain matters
8 of law are such that we have to take them up outside of
9 your presence. That's what the rules are. We'll go in
10 my chambers and take this matter up so that all of you
11 want be inconvenienced and step outside. All right.
12 Ladies and Gentlemen those of you have been selected in
13 this case, if you'll go with the Bailiff to the jury room
14 and remain there until we call you back out. Everyone
15 else remain seated for the time being. And please do not
16 discuss the case.

17 (Jury leaves court room 10:29 a.m.)

18 The Court: All right. Ladies and Gentlemen who
19 were not selected, the jury selection process has not yet
20 concluded so I am going to instruct all of you who were
21 not selected at least at this stage not to discuss this
22 case. You can remain at ease probably for the next
23 fifteen minutes or so, but, again, please do not discuss
24 this particular case. We are going to go into my
25 chambers and take up some matters outside of your

1 presence. All right. Mr. Barr and Mrs. Barr you can
2 come on in.

3 (Batson Motion- outside of presence of jury/jury panel)

4 The Court: All right. Ms. Barr, you've got a Motion
5 pertaining to jury selection?

6 Ms. Barr: I do.

7 The Court: All right. The State has a Motion
8 pertaining to Jury Selection, I'll be glad to hear from
9 you, Ms. Barr.

10 Ms. Barr: ... The Defendant has exercised all of
11 his challenges, eight of which were used against white
12 males and white females. Specifically, Judge, the State
13 will show that the defense struck Juror number 114, which
14 is a white male; Juror number 146, which is a white
15 female, Juror number 103, which is a white male, Juror
16 number 16, which is a white male, Juror number 50, which
17 is a white male. Juror number 176, which is a white
18 male. Juror number 154, which is a white male, Juror
19 Number 77 a white female. We would submit that these
20 persons are a part of a cognizable group and that the
21 Defendant should be required to provide race neutral
22 reasons for exercising the strikes in the manner in which
23 he did.

24 The Court: All right, Mr. Barr, of course the law is
25 that if she presents a prima facie case of your striking

1 members of a cognizable racial group, the burden then is
2 on you to explain or give a race neutral reason for your
3 strikes. I believe the recitation by Ms. Barr of the
4 juror numbers and their races and gender was correct. So
5 we will start off first with Juror number 114, who was a
6 white male who was your first strike.

7 Mr. Barr: Juror number 114. Worked for Santee
8 Electric Coop. Ronnie's on retainer for Santee Electric.

9 The Court: All right. Any response to that Mr. Sabb
10 or Ms. Barr?

11 Mr. Sabb: Judge, that is correct, I do represent
12 them.

13 The Court: All right. How about juror number 146,
14 Mary Smith, white female.

15 Mr. Barr: 146?

16 The Court: Yes, sir.

17 Mr. Barr: Juror number 146. Her husband is a
18 Administrative Assistant. I've found over the years,
19 this is after about 30 years of being a trial lawyer ...

20 The Court: I think she's the Administrative
21 Assistant. Her husband is in Trucking, I think.

22 Mr. Barr: I also know her husband. I have found
23 over the years that the more education jurors have the
24 less likely they are to adopt arguments - they usually
25 come with their own idea or agenda. Over the years, I've

1 learned to shy away from jurors with higher education.
2 And, in addition to that, I also know her husband
3 personally and we just don't get along.

4 The Court: All right. Any response to that Ms. Barr
5 or Mr. Sabb?

6 Mr. Sabb: Judge, if you'll permit we'll listen to
7 counsel with regard to all the jurors and then respond
8 because there are certain things that we will be checking
9 as we respond.

10 The Court: Okay. How about David McCutchen, Juror
11 Number 103, Mr. Barr, he's a white male, he was your
12 third strike.

13 Mr. Barr: What number was that, Judge?

14 The Court: Juror 103, David McCutchen.

15 Mr. Barr: I have him as a school teacher. Judge, I
16 try not to put school teachers on juries. It's been my
17 experience that school teachers are generally not
18 concerned with facts. They are, certainly in this case,
19 there is an allegations against a child. I do not want a
20 school teacher on the jury.

21 The Court: All right. The next challenged strike is
22 Juror number 16, Jerry Brown, who is a white male. Is
23 that correct, Ms. Barr?

24 Ms. Barr: That is correct, Judge.

25 The Court: All right. Number 16, Jerry L. Brown.

1 Mr. Barr: Juror number 16, when he answered, his
2 wife works with the county now or either was working with
3 the county he's not sure. Somebody said she worked at
4 the County Complex, I'm not sure who she is.

5 The Court: When was that, was that yesterday?

6 Mr. Barr: Yesterday.

7 The Court: Mr. Brown indicated, say that again.

8 Mr. Barr: His wife worked at the County Complex. He
9 wasn't sure what she does but that was the response that
10 he gave.

11 The Court: The note I have is the question was
12 whether she was retired or not. Is she retired? What's
13 your information, Ms. Barr, do you have anything?

14 Ms. Barr: Judge, my notes reflect that retired from
15 the County Complex is what I've got.

16 The Court: And the reason for striking her Mr. Barr?

17 Mr. Barr: She worked for the County.

18 The Court: All right. Next is Juror number 50,
19 Robert Fore, who is your seventh strike.

20 Mr. Barr: He also worked for a company that Ronnie
21 is legal counsel for.

22 The Court: The note I have is that it is wife that
23 works for Santee Cooper as a reception. I don't have
24 anything down for where he's employed. Do you all have
25 anything for where he's employed?

1 Ms. Barr: I've got him for Santee Cooper, Your
2 Honor.

3 The Court: All right. He and his wife? Oh, I see.
4 He works at Santee Cooper and his wife is a receptionist
5 elsewhere.

6 Ms. Barr: Correct, Your Honor.

7 The Court: All right. The next challenge strike is
8 that of Henry Pierce, Juror Number 176, a white male. He
9 was an add on, I believe.

10 Mr. Barr: Yes, sir, Judge. And I don't know
11 anything about him. He was not on the jury list. I
12 don't have any information about him.

13 The Court: The only thing I have is he stated that
14 he was unemployed, his wife works at Sumter Pediatrics.
15 Your reason for striking him was that you had no
16 information on him?

17 Mr. Barr: He came in - he either came in late or
18 when we got the jury list he was not on there. I had no
19 information on him.

20 The Court: All right. Next challenge strike is that
21 of Rocky Thompson, Juror number 154. That's your ninth
22 strike.

23 Mr. Barr: His wife is either the first cousin of the
24 Sheriff of Georgetown County who I ... really I know him
25 very well and the fact that is his wife first cousin.

1 The Court: I know his wife had some kind of family
2 relationship with the Georgetown County Sheriff. All
3 right. That takes us to Number 177, Judy Ivey.

4 Mr. Barr: Ms. Ivey's first cousin works over there
5 at the Clemson Extension Service. She lives in Lane. I
6 saw her this morning. I've known that family for years
7 and they are not necessarily the kind of people I would
8 want on a jury. They tend to be on the conservative
9 side. I've been involved with the Ivey's ... My mother,
10 of course, she passed - they are really not the type of
11 people I would want on a jury.

12 The Court: All right. Ms. Barr and Mr. Sabb, at
13 least - well, let me give you all a chance to respond.
14 Do you need to state anything else with regard to Mr.
15 Morris, Number 114?

16 Mr. Sabb: Nothing, Judge, I don't think so.

17 The Court: All right. How about Ms. Mary Smith,
18 Number 114? Mr. Barr stated that he knows her husband.
19 Did you say you didn't get along with him or you just
20 know him?

21 Mr. Barr: 146?

22 The Court: Yes.

23 Mr. Barr: She's the one that the Administrative
24 Assistant and her husband works for Mar-Tech.

25 The Court: Any response to that?

1 Mr. Sabb: Well, Judge, you know, Mr. Barr indicated
2 that he shies away from persons with higher education and
3 Jury Number 138 is an accountant with Tupperware. We
4 would submit that is education which happens to be a
5 different race. We would submit to the court that that
6 rationale is pretextural and it is not a race neutral
7 response.

8 Ms. Barr: Your Honor, in addition the juror who is
9 apparently Ms. Scott completed a juror information form
10 and indicates that she has 16 years of education and that
11 would have been printed out and I assume that is what Mr.
12 Barr is going by.

13 Mr. Barr: I don't have that paper.

14 Ms. Barr: You don't have that.

15 The Court: Well, it's on the master jury list.
16 Artonya Scott who was selected, Juror Number 3 has 16
17 years of education and has been an accountant for
18 Tupperware for 18 years in financial/accounting with
19 Tupperware. Any response to that Mr. Barr?

20 Mr. Barr: Honestly I really didn't see how much
21 education that she had.

22 The Court: What is your reason for thinking that Ms.
23 Smith had some degree of education?

24 Mr. Barr: Well, she's an Administrative Assistant.
25 Inasmuch as she would be in management that she would

1 have got there by promotion or her qualification.
2 Certainly she would have met the qualification to be in
3 management. But she is in management. I do have the
4 note that the lady worked at Tupperware as an accountant.
5 I know that probably at least a substantial number of
6 Tupperware employees and I don't know a black person at
7 Tupperware that is in management.

8 The Court: All right. How about your striking of,
9 where did we leave off.

10 Mr. Sabb: 103 would be the next one, Judge.

11 The Court: 103, David McCutchen. Ms. Barr or Mr.
12 Sabb. He struck her because this jurors wife is a school
13 teacher and this case involves allegations of abuse of a
14 child.

15 Mr. Sabb: Judge there are other employees at least
16 two who actually work with the Williamsburg County School
17 District involved with children as well and to the extent
18 that that person was not, we'll submit to the Court the
19 only real difference between the two to the fact they
20 were working with children was their race. So, we take
21 the position that there again the pretextual reason for
22 strike Juror 115 works a Waccamaw. I'm not sure which
23 one of the Waccamaw it is but there are a number of them
24 Waccamaw that are affiliated with children of tender ages
25 in their rearing and in their education.

1 The Court: The information I have and I'll let you
2 go on, but are 82 and 115. That's Barbara Jones and
3 Sharon McDonald are both black females and bus drivers.

4 Mr. Sabb: Yes, sir. Thank you, Judge. And they
5 both care for the children, work directly with children
6 and so we just take the ... and those are the person
7 themselves. Not a relative, not a friend but the
8 individuals themselves task with the responsibility of
9 caring for the young and so we would submit to the Court
10 that that is simply a pretextual reason by counsel.

11 Ms. Barr: Your Honor, I'll will add as a final note
12 Juror Number 82, Barbara Jones a black female according
13 to our information indicates that she has fourteen years
14 of education which she also has education beyond what Mr.
15 Barr thinks would be acceptable.

16 Mr. Barr: Barbara Jones, you say. What is her
17 number?

18 The Court: 82.

19 Mr. Barr: She said she works for the school
20 district. None of these people have indicated that they
21 are teachers. There is a difference between being a
22 teacher and working for the school district. There is
23 nothing here to indicate, well, it says that she is a bus
24 driver but she's not responsible for teaching children.
25 And clearly there is a distinction in my mind between a

1 person that is certified to teach children and a person
2 that drives a school bus. But as I said consistently
3 teachers just don't make good jurors.

4 Mr. Sabb: Judge one final note on that if I might,
5 please.

6 The Court: Well, this is a husband of a teacher.

7 Mr. Sabb: Yes, sir. That's the point I was getting
8 ready to make, Judge. And I think that is significant.

9 Mr. Barr: I don't think it is significant because
10 we get the information concerning jurors we find out what
11 their spouses occupation is. Unless we are just
12 gathering that information for the sake of just having
13 it. I don't think that's it. We gather that information
14 because we know that spouses and their spouses occupation
15 has an impact. Certainly, ordinarily you're not going to
16 get incompatible people in that particular area so for
17 that reason, I mean, that's all we've got.

18 The Court: That takes us to Mr. Brown, Juror Number
19 16. Mr. Barr's stated reason for striking him was that
20 his wife now or formerly worked at the Williamsburg
21 County Complex. Any response to that from the State?

22 Ms. Barr: Judge, if I might add. I believe that -
23 Judge, it might have been jury number 146 who's first
24 cousin was kin to Laura Rogers, works for the
25 Williamsburg County Sheriff's Office.

1 The Court: What is Juror Number 146 name?

2 Ms. Barr: I'm sorry, Judge.

3 Mr. Sabb: Mr. Pressley is the juror she is referring
4 to, Judge.

5 Ms. Barr: Juror Number 130. He is a black male and
6 his first or second cousin is Sergeant Laura Rogers
7 employed by the Williamsburg County Sheriff's Office.
8 Not only that she is a witness in the case and she is the
9 investigating officer on this charge.

10 The Court: All right. Mr. Pressley, who is a
11 relative of a particular witness, Sergeant Rogers, you
12 selected him, he's a black male. Juror Number 130.

13 Mr. Barr: Yes.

14 The Court: And you struck Mr. Brown, whose wife
15 works at the County Complex.

16 Mr. Barr: Quite frankly, Laura Rogers, in my
17 opinion, and this is based on past experience and cross
18 examination of her, because I've cross examined her,
19 Laura Rogers is a eye-witness. I have absolutely no fear
20 of Laura Rogers as a defense lawyer. And this is not
21 based on anything that I have heard but just based on the
22 number of times that I have, of course, examined her as a
23 witness. I'm thoroughly familiar with the report she has
24 done and quite frankly Laura Rogers, I've known her for
25 quite some time and I'm not offended by her in any way.

1 The Court: All right. What the State is saying you
2 didn't strike a white male who has a relative involved in
3 the County Government, let's just leave it at that.
4 Works at the County Complex.

5 Mr. Barr: Who I know nothing about.

6 The Court: You did not strike Mr. Pressley who has a
7 relative that ...

8 Mr. Barr: Yes, sir.

9 The Court: ... also works in this particular area of
10 law enforcement, which in the eyes of the general public
11 even though the Sheriff is not a county officer.

12 Mr. Barr: Well, Judge, when you've worked in
13 Williamsburg County as long as I have you do gather
14 information and you have contact with people. I know Mr.
15 Pressley. I represented his brother years ago and I feel
16 like he's a person that I don't think he brings any bias
17 to a jury. I'm very confident based on my own person
18 knowledge of putting him on a jury.

19 The Court: In other words, that your response to
20 their allegation of ...

21 Mr. Barr: Yes, sir.

22 The Court: How about Mr. Fore, number 50, who works
23 at Santee Cooper. He's a white male. He was the
24 Defendant's seventh strike. Any response to that Ms.
25 Barr or Mr. Sabb?

1 Mr. Sabb: Well, trying to find a juror who Mr.
2 McBride, I can't remember the juror number. Her husband
3 also worked for Santee Cooper.

4 The Court: Ms. McBride.

5 Mr. Sabb: Yes, sir. I'll find her number.

6 The Court: I don't see Ms. McBride on my list.

7 Okay. Number 44.

8 Mr. Sabb: Yes, sir. Her husband works for Santee
9 Cooper.

10 The Court: All right. Mr. Barr?

11 Mr. Barr: I'm not sure I understand what ...

12 The Court: You struck or your stated reasons for
13 striking number 50 is that he works at Santee Cooper and
14 Mr. Sabb indicates that his information shows that
15 Barbara Douglas McBride, who is a black female, Juror
16 Number 44, who was seated her husband works at Santee
17 Cooper.

18 Mr. Barr: Well, Judge, Barbara Douglas, isn't the
19 lady that works at Tupperware?

20 The Court: Yes.

21 Mr. Barr: I still don't see the ...

22 The Court: The Santee Cooper connection. Ms.
23 McBride's husband works at Santee Cooper.

24 Mr. Barr: Well, now, I know Ms. McBride, the lady
25 that works at Tupperware. Yes, sir. I've known her for

1 years. My stepfather worked at Tupperware. She was not
2 working there then but I do know I've known her probably,
3 she was a friend of Patricia, of a young lady who's
4 daughter works in my office. In fact, she's working in
5 my office today and I have personal knowledge about her
6 and I certainly don't think that she would have to come
7 to make a decision, and if I have to make a decision
8 concerning somebody I know as opposed to somebody that I
9 don't know I will certainly use the knowledge I have that
10 would relate to that person in what ever way I can. I
11 understand that is what jury selection is all about.

12 Mr. Sabb: Judge, the argument is that it has nothing
13 to do with Santee. In essence, his argument is ...

14 The Court: He took Ms. McBride.

15 Mr. Sabb: Yes. So, his excuse on striking the other
16 jury has no merit because it has nothing to do with the
17 notion of working at Santee Cooper. It has everything to
18 do with whether or not he knows the person or not. And
19 if the reason then is well, gee I know this person and
20 don't know about that person, well, forget about that
21 connection but as it relates to other jurors I don't know
22 them but because they work a certain place or because
23 their wife works a certain place I can strike them. We
24 submit that that notion of pretextual is all about ...
25 To raise that notion of being able to strike one because

1 they are working with Santee Cooper and strike and allow
2 the others to sit under same or similar circumstances.

3 Mr. Barr: Judge, I disagree with Ronnie's notion.
4 And quite frankly I understand that a Batson is hard to
5 make but I don't know the answer when a trial lawyers are
6 called upon to know information that they have with their
7 own personal knowledge just because a person is of a
8 particular race. Clearly, in this situation, if I'm
9 looking at scrutinizing the jurors and their
10 qualifications and I come up with a juror I know as
11 opposed to somebody that I don't know if I've got
12 information on that person then I think that ought to be
13 left to the trial lawyer to utilize the knowledge that I
14 have ... the personal knowledge that I have of that
15 person in terms of seating jurors that I think can be
16 objective. That's the whole purpose of it.

17 The Court: All right. That takes us to Mr. Henry
18 Pierce. Juror Number 176. Mr. Barr's reason for striking
19 this white male. He was not on the jury list and he had
20 no juror information on him.

21 Mr. Sabb: Judge, Mr. Barr sat through the jury
22 selection just as we did and the last juror that the
23 clerk called was Henry Pierce. He told us that he was
24 from Lake City and he indicated that he was disabled
25 according, Judge, to my notes. And, so, to suggest he

1 didn't have the information, we submit to the Court it
2 was pretextual. He was there the same as we were.

3 Mr. Barr: Judge, last week, I came to the
4 Courthouse, got the jury list, took the jury list.
5 Called my client's father from Murrells Inlet. We sat
6 down and we went over this jury list. We took every bit
7 of information we had concerning these jurors. I made
8 inquiries concerning the jurors. This man is somebody
9 that came up that I had absolutely no information about
10 whatsoever. Now, whatever he may have said whenever he
11 got in the courtroom, that's only part of what we are
12 dealing with. We have researched these jurors and
13 certainly, like I said, at the time I had absolutely
14 nothing on him. I do remember he came in late or came up
15 or was added to the list. In fact, he was the only
16 person that was added to the list. At the time that we
17 obtained the jury list and did the research, at least our
18 initial research we didn't even have this person.

19 The Court: All right. That takes us to the ninth
20 strike of Rocky Thompson, whose wife's relative is the
21 Georgetown County Sheriff. Any response to that from the
22 State?

23 Mr. Sabb: Judge, it's the Laura Rogers connection.
24 I mean, it's the same type scenario and we submit to the
25 Court that it is simply pretext.

1 The Court: The Laura Rogers?

2 Mr. Sabb: With regard to Mr. Pressley, Your Honor,
3 and the idea of ...

4 The Court: I've got you.

5 Mr. Sabb: ... yes, sir. It's the same thing, Judge.

6 Mr. Barr: Judge, what is the Sheriff's name?

7 The Court: In Georgetown?

8 Mr. Barr: Yes, sir.

9 The Court: You said you've sued him before?

10 Mr. Barr: Yes, sir. He had somebody down there at
11 the jail. Some fellow at the jail and he fell down in
12 the jail and they didn't give him medicine, but aside
13 from that I've tried more cases in Georgetown County then
14 I have tried in Williamsburg County.

15 The Court: Let me ask you this. Did Mr. Thompson
16 say his wife's brother was the Sheriff?

17 Ms. Sabb: His wife's first cousin.

18 The Court: His wife's first cousin.

19 Mr. Barr: I've tried just as many cases in
20 Georgetown cases as I do Williamsburg cases. I've
21 got more criminal cases on the Georgetown County
22 docket then any Georgetown County lawyer. Now, in
23 terms of my interaction with the Georgetown County
24 Sheriff's Department, the law enforcement in
25 Georgetown, I am just as knowledgeable about

1 Georgetown law enforcement then I am Williamsburg
2 County and I do not want them on a jury. They don't
3 like me. I don't like them.

4 The Court: Mr. Sabb's response is that you accepted
5 Mr. Pressley a black male whose blood cousin is a
6 Williamsburg County Sheriff's Deputy. You indicated
7 earlier that you know her and you think that she would
8 end up being a witness for you.

9 Mr. Barr: Judge, quite frankly, I do know, I've
10 known Laura for quite a few years and while it might be
11 and I don't want to be presumption by saying that she
12 brings no philosophical position to her job. That is, in
13 fact, the case. She is a person who through the years I
14 have always known to be applicably objectionable when it
15 comes to investigation and not only when it comes to
16 investigating cases in this court but in Family Court as
17 well. You can always count on her to bring absolute
18 objective to a situation as opposed to being in a
19 situation where a law enforcement officer ordinarily
20 they've got orientation. Laura is not that way. I know
21 that from dealing with her.

22 The Court: All right. That takes us lastly then
23 Judy Ivey, Juror Number 77. She is a white female. Mr.
24 Barr said he struck her because her first husband works
25 Clemson Extension and he also saw her walking down the

1 road this morning. I don't know the context of that.

2 Mr. Barr: Well, I mean, I just mention that because
3 I did see her this morning.

4 The Court: Okay. Not for reason for striking her
5 ...

6 Mr. Barr: No, no.

7 The Court: The fact that he has known her and that
8 your mother worked ...

9 Mr. Barr: My mother worked at Clemson Extension for
10 twelve, thirteen years.

11 The Court: All right. And you said she is basically
12 from a conservative ...

13 Mr. Barr: Yes, sir. I know quite a few of them.

14 The Court: All right. Anything from the State on
15 her?

16 Mr. Sabb: Judge, we simply take the position that
17 for counsel to use all of these, in our views far
18 reaching connections, the first cousin of the juror
19 worked someplace for somebody I know. Judge, that has
20 nothing to do with that juror. It takes away from the
21 individuality and we see a consistent theme throughout
22 counsels recitation with regard to dragging other people
23 in to somehow philosophical connecting them with jurors
24 and somehow they talk about this notion of guilt by
25 association and how we frowned upon that notion but

1 essentially if you're kin to somebody who thinks a
2 certain way he shouldn't be on the jury. And Judge we
3 just view counsel regarding this as being a stretch and
4 we submit to the Court that that is just another
5 pretextual recitation for purposes of getting to the
6 body line which was to strike ever member of white
7 communities that is sitting on that jury with the
8 exception of two. One being because he had no more
9 strikes left and that was the last juror that sit. The
10 other being, of course, Mr. Haselden, who for whatever
11 reasons are permitted to sit, but Judge all of those are
12 simply pretextual reasons for striking those jurors is
13 objective. We have situations where over 90 percent of
14 this panel is African/American decent and Judge not only
15 were the reasons given pretextual, the ultimate goal of
16 achieving non-participation by a cognizable group in our
17 community has been achieved as a result of it.

18 Mr. Barr: Judge, I would only say first of all, in
19 this particular case, my client is a white male. He is
20 not an African/American. Secondly, with respect to Mr.
21 Haselden, Mr. Haselden was, we thought long and hard
22 about Mr. Haselden. My client, Mr. Taylor's father,
23 ultimately made the decision concerning Mr. Haselden. He
24 ultimately made the decision concerning Mr. Haselden.
25 Apparently, he has some indirect knowledge or Mr.

1 Haselden through some relative of his and when I decided
2 or we looked at Mr. Haselden, we already knew that Mr.
3 Haselden would be a person that we would put on a jury.
4 Now, Judge, let me just say in summary, Batson requires
5 that the defense or that any particular, State or
6 Defense, that you give a race neutral reason for the
7 selection that you've made and, of course, once you go
8 beyond that, Batson, in my opinion, I wish we didn't have
9 it, but that's not the case. Once you go beyond that
10 then you get into the kind of argument that Mr. Sabb is
11 making now whereby you adopt something that is totally
12 unmanageable in terms of trying to justify or challenge a
13 persons right to make preemptory challenges based on the
14 information and based on the knowledge that they have in
15 trying to select a qualified jury. I think if you look
16 at the rationale for the rhythm and reason I don't know
17 why Mr. Sabb is not satisfied with the jury. I take it
18 that inasmuch as they have raised a Batson issue that
19 they aren't. Beyond that the law does not require that
20 my rationale for jury selection satisfy the prosecutions
21 philosophical position as it relates to extending and
22 going beyond that because the law doesn't get into that.
23 What he wants you to do is evaluate the rationale that I
24 view the jury selection as opposed to making a decision
25 as to whether or not we have given a race neutral reason.

1 I think that you know from your own experience that once
2 you've gone beyond that you get into a whole area that
3 you could never stop.

4 The Court: Obviously if you take it to some extreme,
5 I don't know if the State has approach that. If you take
6 it to some extreme you could never seat a jury. If you
7 take Batson to its illogical extreme. We've all had a
8 great deal of experience with the Batson issue and like
9 it or not that's the law. One case that I've got here
10 and this is one of the things that Mr. Sabb and Ms. Barr
11 reference the uneven application of a neutral reason does
12 not automatically result in a finding of the
13 discrimination if the strike opponent, that means Mr.
14 Barr, provides a race or gender explanation or an
15 inconsistency in the application of the reason. For
16 example, with regard to Mr. Pressley. If there is a
17 racial neutral reason for why he did not strike a juror,
18 for similar characteristics to the one that he did strike
19 then that reasoning on the defenses side would survive.
20 I'll just work in reverse order. I believe that his
21 strike of Mr. Ivey, Juror Number 77 was race neutral.
22 His strike of Mr. Thompson, Juror Number 154 is a close
23 one, but his wife's first cousin is the Georgetown County
24 Sheriff. I believe that under the circumstances that
25 there is no similarly situated juror at least in context

1 of the fact that he has explained his reasons for
2 accepting Mr. Pressley. So, I'll let Mr. Thompson's
3 strike stand. Then we have Juror Number 176, Mr. Pierce.
4 He said he's not on the jury list and that he had no
5 information on him, and we know the reasoning for the
6 strike and my interpretation of the law, his reasonings
7 don't have to be plausible, they just have to be race
8 neutral. I want to go out of order a bit. Juror Number
9 103, David McCutchen, whose wife is a school teacher.
10 The State's argument that two bus drivers, black female
11 bus drivers were seated and they have access to a child,
12 or excuse me, contact with school children conceivably.
13 That does give me some pause but in the scheme of things,
14 this jurors wife is an actual school teacher and I think
15 that the situation would be someone different so that
16 strike will stand. Mr. Morris, who is Juror Number 114.
17 He works at Santee Electric Coop. Mr. Fore, who works at
18 Santee Electric Coop and I believe those are the only two
19 jurors who have a Santee Coop connection, is that
20 correct?

21 Mr. Sabb: Actually, Judge ...

22 The Court: Excuse me, Ms. McBride's husband works at
23 Santee Electric Coop.

24 Mr. Sabb: Actually, Judge, there are two different
25 ...

1 The Court: Santee Cooper and Santee Electric Coop.

2 Mr. Sabb: Yes, sir. There are two entities.

3 The Court: All right. So, Juror Number 114, Mr.

4 Morris works at Santee Electric Coop who Mr. Sabb
5 represents. Do you challenge that strike Mr. Sabb?

6 Mr. Sabb: No, Judge.

7 The Court: All right. Then that takes us to Mr.
8 Fore, who works at Santee Cooper. Was that your reason
9 for striking him Mr. Barr? Juror Number 2.

10 Mr. Barr: Isn't his wife a receptionist at Santee
11 Electric Co-op?

12 The Court: No, his wife is just a receptionist. I
13 didn't have an occupation. She's just a receptionist.

14 Mr. Sabb: Judge, I do believe there was an
15 indication ...

16 The Court: She was a receptionist at Santee Electric
17 Co-op.

18 Mr. Sabb: Through a temporary agency and that agency
19 placed her with Santee Co-op.

20 The Court: All right. That one will stand by
21 extension, I'm just going to exercise my discretion in
22 that regard. How about, let's see, that leaves us with
23 Juror Number 16, Mr. Brown, white male, wife works at the
24 County Complex. I'm going to let that stand in light of
25 Mr. Barr's explanation as to why he seated Mr. Pressley

1 who was related in some extent to the juror who is a
2 potential witness. The strike that gives me trouble Mr.
3 Barr and, again, if you had ten reasons for striking a
4 juror and nine of them were perfectly sufficient and one
5 was not, then nine don't comp the one. You struck Ms.
6 Smith, juror number 146, a white female because of her
7 education but you took juror number 138, Artonya Scott,
8 who was a black female who has four years of post-high
9 school education.

10 Mr. Barr: Judge, when I talk about education, I'm
11 talking about the actual position a person is in.
12 Ordinarily, there's an associate in education, there's a
13 master, mobility in employment, management. Things ... I
14 simply did not even look at the number of years, well,
15 education, I'm talking about that person's condition as
16 it relates to how well they have done. As I said, when I
17 looked at the Administrative Assistant or administrative
18 nature of this person's employment. Clearly, I
19 recognized that she was a person that wasn't working in
20 labor she was working in management. Perhaps I should
21 have and I say that maybe I ... a person with a education
22 has a identity, but the workplace at Tupperware and I
23 don't know of any black people in management at
24 Tupperware.

25 The Court: What does that have to do with

1 anything, though. This lady has been an employ of
2 Tupperware for 18 years in accounting.

3 Mr. Barr: Yes, sir.

4 The Court: What is the fact that you don't know any
5 people at Tupperware who are black who are in management?

6 Mr. Barr: Ordinarily when you get people who are in
7 management, like I said, in terms of how they exercise
8 their duty and responsibilities in a jury situation I
9 have found over the years that most times they do come
10 with an agenda and, of course, as a result of being who
11 they are they are constantly manifesting their discretion
12 as it relates to how you handle people and not only how
13 you handle people but approaching, receiving the law of
14 the court as you instruct juries on the law. Judge, I've
15 been practicing law long enough to know that I have those
16 cases where I've had those kind of people on jury where
17 the jury explained the law to them and they just
18 absolutely ignore the law and do whatever they want to do
19 irrespective of the law and I'm not, you know, I'm not
20 concerned that this is a isolated type of situation but
21 I've observed over the years of juries and it has been my
22 experience that they come to people who again they are
23 just ordinary people who as I said I would much rather
24 have somebody perhaps with a six grade education driving
25 a truck then to have a president of Williamsburg Bank

1 come over here and as I said that's, what that does is
2 that takes my argument not to extreme but illuminates
3 that. Clearly, you can see that if I bought Bob over
4 here and tried to convince him that he should take the
5 law as you give it to him as opposed to bringing some
6 person somewhere at the Clerk's Station or receives money
7 at the bank clearly I'm going to have a much better
8 chance of Bob, I know he's going to oppose because he's
9 vice president. And that's the kind of thing we are
10 talking about.

11 The Court: All right. What I've done here is, of
12 course, nine of the ten strikes I have found to be
13 appropriate under the Batson scheme. Does the State want
14 to continue to push the strike of Mary Smith, Juror
15 Number 146 in light of my ruling as to the other jurors?
16 I'll approach it that way. If we go out there and quash
17 the whole panel, if I rule with the State on Mary Smith,
18 that would be the only one who you would not be able to
19 strike as a matter of law. Maybe I ought to approach it
20 that way.

21 Mr. Barr: Judge, what juror number is that?

22 The Court: She's Juror Number 146. The troubling
23 thing about the State's reasoning is because of her
24 degree of education and then explained that but, of
25 course, I've got to go with my initial interpretation of

1 it or my analysis of what you explained about her
2 education. All right, anything from the State?

3 Mr. Sabb: Yes, sir. Your Honor, please. We would
4 take the position that to the extent that the Court has
5 ruled that it has violated, that this panel, we would
6 strike from the reconvened panel.

7 The Court: All right. Mr. Barr, it would be my
8 finding that Batson was violated to the fact that you did
9 accept Artonya Scott and it's with reluctance that I do
10 this because obviously as you said earlier I've been in
11 this position many times myself. Artonya Scott even
12 though a black female with four years of post-high school
13 education and employed with the same company for 18 years
14 as an accounting you accepted her but did not accept
15 someone who is an administrative assistant with less
16 formal education who was a white female. So, if we go
17 back out there and re-strike this jury, the only juror
18 you will not be able to strike by law is Ms. Smith. The
19 other individuals who you struck are still, you'd still
20 be permitted to strike. Under the law I've got to quash
21 the full panel. At least that is my interpretation of
22 the law. This I assume will take us not terribly long
23 and then we will have to get some idea as to when you
24 folks want to come back. I'm sure the jury is probably a
25 little bit puzzled and put out at least at the moment and

1 it's not any of ya'lls fault it's just the reality that
2 they have been out there about two hours this morning.
3 So, if we finish the jury selection within thirty minutes
4 which I assume we will it's my intention to go ahead and
5 break for lunch at that time and come back at 1:30. Mr.
6 Barr gave you a copy of the Motion in Limine pertaining
7 to Mr. Taylor's criminal record or conviction. I don't
8 know the specifics but we can address that perhaps then.
9 Does either side see this case going into Thursday
10 afternoon? I'm thinking about a juror that I told him he
11 was excused Thursday afternoon. He's going to a wedding.
12 in Washington. He was seated on this jury. Do you see
13 it going into Thursday afternoon. Obviously the juries
14 deliberations no one knows but as far as your
15 presentation when do you think you would be through?

16 Ms. Barr: Judge, I would imagine no later than
17 before lunch on Thursday.

18 The Court: Then, Mr. Barr, of course, you don't have
19 put up a defense at all, but if we argue and charge
20 Thursday morning that might not be enough time for Mr.
21 Chandler who I have promised to be excused Thursday
22 afternoon. Any objection to me excusing him?

23 Mr. Sabb: No.

24 Mr. Barr: No.

25 The Court: All right. You all go back out. And for

1 the record I have sustained the State's objection as to
2 juror number 146, Mary Smith. All right. I'll be out in
3 just a second.

4 The Court: All right. Mr. Barr and Mrs. Barr, I'm
5 going to have the Bailiff bring the jury out of the jury
6 room and conduct the jury selection once again. Any
7 objection to that Ms. Barr, other than what we have
8 already put on the record?

9 Ms. Barr: No, Your Honor.

10 The Court: Mr. Barr?

11 Mr. Barr: None other than what's on the record.

12 The Court: All right. Bring the jury in, please and
13 put them with the rest of panel.

14 (Jury enters court room 11:31 a.m.)

15 (Second Jury Selection is conducted)

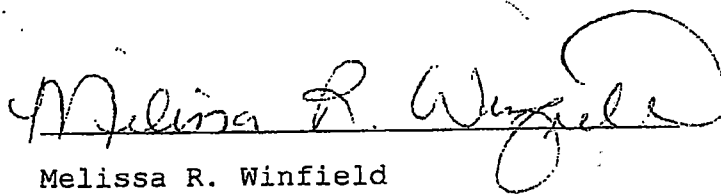
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CERTIFICATE

This is to certify that the Jury Selection/Batson Motion in the matter of State vs. Robert Troy Taylor, consisting of Thirty-Nine (39) pages is a true and correct transcript; said hearing was reported by the method of Stenomask with Backup.

I further certify that I am not employed by any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 24th day of March, 2009.



Melissa R. Winfield
Certified Court Reporter

Notary Public for South Carolina
My Commission Expires: 3-5-2014

HEARING

5

1 THE COURT: All right, Ms. Barr, Mr. Barr, I'm going
2 to have the bailiff bring the jury out of the jury room
3 and we'll conduct jury selection once again. Any
4 objection to that, Ms. Barr, other than what we've
5 already put on the record?

6 MS. BARR: No, your Honor.

7 THE COURT: Mr. Barr?

8 MR. BARR: None other than what's on the record.

9 THE COURT: Bring the jury back out in the -- the
10 entire panel.

11 (Jury enters the courtroom at 11:31 a.m.)

12 THE COURT: All right. Ladies and gentleman of the
13 jury, I certainly do apologize for the, I guess apologize
14 is probably not the correct term, but I ask you for your
15 understanding and accommodation -- the -- from time to
16 time, issues arise that have to be addressed, and this
17 calls for your exercises the utmost patience. And we
18 certainly do appreciate that. At this time for reasons
19 that are certainly not the fault of anyone, we are going
20 to resume or repeat the jury selection for this
21 particular case. And the clerk will call your names
22 again, and you are to come forward again as you did the
23 last time. And the jury selection will take place just
24 as it did before. All right. Any -- anything else for
25 the record before we begin that process from the State or

HEARING

6

1 from the Defendant?

2 MS. BARR: Nothing from the State, Your Honor.

3 MR. BARR: Nothing from the Defendant.

4 THE COURT: All right.

5 CLERK OF COURT: Members of the petit jury, as I call
6 your name and number, please come forward, follow
7 instructions as before. Juror number 138, Artonya Scott.

8 MS. BARR: Present Ms. Scott.

9 MR. BARR: Please excuse Ms. Scott.

10 CLERK OF COURT: You may return to your seat, Ms.
11 Scott. Number 122, Wilson Nesmith.

12 MS. BARR: Present Mr. Nesmith.

13 MR. BARR: Seat the juror, please.

14 CLERK OF COURT: Have a seat to my right, Mr.
15 Nesmith, in the petit jury box. Number 140, Clarence
16 Scott.

17 MS. BARR: Present Mr. Scott.

18 MR. BARR: Please excuse Mr. Scott.

19 CLERK OF COURT: You may return to your seat, Mr.
20 Scott. Number 103, David McCutchen.

21 MS. BARR: Present Mr. McCutchen.

22 MR. BARR: Seat the juror, please.

23 CLERK OF COURT: Have a seat to my right in the petit
24 jury box. Number 165, Diane Weaver.

25 MS. BARR: Please excuse Ms. Weaver from the trial.

HEARING

7

1 CLERK OF COURT: 146, Mary Smith.

2 MS. BARR: Present Ms. Smith.

3 MR. BARR: Seat the juror, please.

4 CLERK OF COURT: Have a seat to my right in the petit
5 jury box. Number 16, Jerry Brown.

6 MS. BARR: Present Mr. Brown.

7 MR. BARR: Seat the juror, please.

8 CLERK OF COURT: Have a seat to my right in the petit
9 jury box. Number 141, Jessie Scott.

10 MS. BARR: Present Ms. Scott.

11 MR. BARR: Seat the juror, please.

12 CLERK OF COURT: Have a seat in the petit jury box.
13 Number 50, Robert Fore.

14 MS. BARR: Present Mr. Fore.

15 MR. BARR: Please excuse the juror.

16 CLERK OF COURT: You may return to your seat. Number
17 72, Brian Haselton.

18 MS. BARR: Present Mr. Haselton.

19 MR. BARR: Swear the juror.

20 CLERK OF COURT: Have a seat in the petit jury box.
21 Number 75, Benny Hawkins -- Huggins.

22 MS. BARR: Present Mr. Huggins.

23 MR. BARR: Please excuse the juror.

24 CLERK OF COURT: You may return to your seat. 82,
25 Barbara Jones.

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1 MS. BARR: Present Ms. Jones.
2 MR. BARR: Seat the juror, please.
3 CLERK OF COURT: Have a seat in the petit jury box.
4 147, Doris Stalnaker.
5 MS. BARR: Present Ms. Stalnaker.
6 MR. BARR: Please excuse the juror from the trial of
7 this case.
8 CLERK OF COURT: 172, Cynthia Wilson.
9 MS. BARR: Please excuse Ms. Wilson from the trial of
10 this case.
11 CLERK OF COURT: You may return to your seat. Number
12 90, Gerald Lewis.
13 MS. BARR: Present Mr. Lewis.
14 Mr. Barr: What number, Ms. Williams.
15 CLERK OF COURT: 90.
16 MR. BARR: Seat the juror.
17 CLERK OF COURT: Have a seat to my right in the petit
18 jury box. 158, Rodney Tisdale.
19 MS. BARR: Present Mr. Tisdale.
20 MR. BARR: Seat the juror, please.
21 CLERK OF COURT: Have a seat to my right in the petit
22 jury box. 44, Barbara McBride.
23 MS. BARR: Present Mrs. McBride.
24 MR. BARR: Seat the juror, please.
25 CLERK OF COURT: Have a seat to my right in the petit

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1 jury box. Number 114, Reese Morris, Jr.

2 MS. BARR: Present Mr. Morris.

3 MR. BARR: Please excuse

4 CLERK OF COURT: You're excused, Mr. Morris. 125,
5 Jerry Parker.

6 MS. BARR: Present Mr. Parker.

7 MR. BARR: Please excuse the juror.

8 CLERK OF COURT: 152, John Thomas.

9 MS. BARR: Present Mr. Thomas.

10 MR. BARR: Seat the juror, please.

11 CLERK OF COURT: Have a seat to my right in the petit
12 jury box. 154, Rocky Thompson.

13 MS. BARR: Present Mr. Thompson.

14 MR. BARR: Please excuse the juror.

15 CLERK OF COURT: You may return to your seat. 115,
16 Sharon McDonald.

17 MS. BARR: I believe this juror indicated she's got a
18 test on Thursday.

19 CLERK OF COURT: Thursday, she does.

20 THE COURT: Ms. McDonald, do you have a test on
21 Thursday morning?

22 JUROR: Yes, sir. I do. Ten o'clock.

23 THE COURT: You're excused. Thank you. Thank you,
24 Ms. Barr.

25 CLERK OF COURT: Number 11, Sylvia Brickman.

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1 MS. BARR: Present Ms. Brickman.

2 MR. BARR: Please excuse this juror from the trial.

3 CLERK OF COURT: Number 11. 162, Meredith

4 Washington-Greene.

5 MS. BARR: Present Mrs. Greene.

6 MR. BARR: Please excuse the juror from trial of this
7 case.

8 CLERK OF COURT: Number 60, Gennie Campbell.

9 MS. BARR: Please excuse Ms. Campbell from the trial
10 of this case.

11 CLERK OF COURT: You may return to your seat. 176,
12 Henry Pierce.

13 MS. BARR: Present Mr. Pierce.

14 MR. BARR: Your Honor, may we approach the bench.

15 THE COURT: Yes, sir.

16 (Off the record bench discussion).

17 CLERK OF COURT: No, he's used up all his strikes.

18 MR. BARR: Please seat the juror.

19 CLERK OF COURT: Have a seat to my right in the petit
20 jury box.

21 THE COURT: All right, this will be the alternate
22 selection.

23 CLERK OF COURT: Number 130, David Pressley.

24 MS. BARR: Please excuse Mr. Pressley from the trial
25 of this case.

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1 CLERK OF COURT: Number 41, Rita Dollard.

2 MS. BARR: Present Ms. Dollard.

3 MR. BARR: Seat the juror, please.

4 CLERK OF COURT: Have a seat to my right in the petit
5 jury box.

6 THE COURT: All right. Any matters pertaining to
7 jury selection from the State or the Defendant?

8 MS. BARR: Nothing from the State.

9 THE COURT: Mr. Barr?

10 MR. BARR: Nothing from the Defense, Judge.

11 THE COURT: All right. Ladies and gentleman of the
12 jury, you have been selected in the trial of this case.
13 I'm going to ask you to go with the bailiff. He will
14 show you to your jury room. I'm going to ask you to be
15 back in your jury room at two o'clock. We will begin the
16 trial of the case at that time. In other words, I'm
17 going to give you a good, long period of time for lunch.
18 If you would be so kind, please follow this instruction
19 during lunch and throughout the remainder of this case
20 until I tell you otherwise: you are not to discuss this
21 case at all, even amongst yourselves, even amongst your
22 family members, coworkers, and so forth until I tell you
23 you can do so, because you have -- you will be swearing
24 an oath to well and truly try this case according to the
25 facts, evidence, and the laws so help you God. And all

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1 don't know that that would -- would -- would remedy that
2 situation. Because, clearly, as it relates to the
3 arguments that were made for or against with respect to
4 the exercise of the Batson challenges, I -- I certainly
5 can't say that -- that I could remember verbatim the
6 rationales that were -- were given. And for that reason,
7 your decision was based either on what you heard or did
8 not hear. And -- and I just don't know that that kind of
9 record would accurately -- accurately reflect ---

10 THE COURT: All right.

11 MR. BARR: --- what -- and I don't know that there's
12 a way to do that.

13 THE COURT: Well, while we're on this point, I'll let
14 you finish in just a minute. But while we're on this
15 point, the State objected to, under Batson versus
16 Kentucky, to your striking of eight jurors. Eight of
17 your ten strikes were exercised by striking members of
18 the white race. And the State objected to that. And the
19 only -- the only objection of the State that I upheld was
20 the strike of Mary Smith, juror number 146 who is the
21 administrative assistant at a local industry. I mean,
22 I'm sure that I've got that noted. She's worked -- she
23 has 12 -- she has a high school degree. 36 years in --
24 as an administrative assistant. Your reason for striking
25 her, as stated on the record initially, was that because

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1 of her degree or level of education, that -- that you did
2 not think it would be -- it would behoove your client to
3 accept a juror in that category. And also that you knew
4 her husband and did not particularly see eye to eye with
5 him on a particular issue. The State pointed out the
6 fact that juror number 138, or Tonya Scott, a black
7 female had a higher degree of education, matter of fact
8 16 years of education and had been employed for I believe
9 16 or eight -- oh, excuse me, 18 years as an accountant
10 at Tupperware and that -- that she was therefore a juror
11 who was similarly situated. And then you indicated
12 during chambers that perhaps your use of the term
13 education was misapprehended by me or misposted by you;
14 what you meant was job experience and life experience and
15 becoming and being an administrative assistant or what
16 you consider to be in company management. And I decided
17 with the State on that particular juror. So I believe
18 that summarizes the arguments that were made. And with
19 regard to the other seven strikes that were challenged, I
20 didn't grant that motion -- those motions anyway. So,
21 Mr. Barr, if you're concerned about the record in that
22 regard, I'm sure that even the tape recorder that we do
23 have or any other statement you want to make to clarify
24 the record when we return from lunch, we can -- we can do
25 that then. All right. Anything else, Ms. Barr?

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1 MS. BARR: Judge, only thing I would want to add is
2 that we also indicated that Juror number 82, who was
3 Barbara Jones, a black female, was seated by the Defense
4 and she has two years' education beyond high school

5 THE COURT: All right. Okay. Mr. Barr, anything
6 before we break for lunch?

7 MR. BARR: Nothing.

8 THE COURT: What I'd like to do is for you folks to
9 come back about 1:30 after you've gathered your thoughts
10 on any pre-trial motions. And at least I can know where
11 we're headed on that. As far as your Motions in Limine
12 that you handed to me, I want to meet with y'all after we
13 go off the record and we can get into those at least
14 informally and we can get prepared to push forward on the
15 record after lunch. Anything else, Mr. Barr?

16 MR. BARR: No, sir, Judge.

17 THE COURT: All right. Ms. Barr, you have a matter
18 in another case? Are all the folks that are here in the
19 courtroom here on the case involving Mr. Taylor? They're
20 here -- all right. I just didn't know if those folks
21 were waiting to leave. All right, Mr. Barr, if you'd
22 like, you and your client can depart. And I believe Ms.
23 Barr has a matter pertaining to sentencing in another
24 case?

25 MS. BARR: That's correct, Your Honor.

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1 (Jury retires to the jury room at 3:17 p.m.)

2 THE COURT: All right, Ms. Barr, give you a few
3 minutes.

4 MS. BARR: Thank you, Judge.

5 (Off the record).

6 (Jury enters the courtroom at 3:26)

7 THE COURT: All right, thank you, ladies and
8 gentlemen. This probably won't be the last time I have
9 to instruct you again. All right, Ms. Barr, the State can
10 call its first witness.

11 MS. BARR: At this time, we all Gaye Allen Cooke.

12 (Witness is sworn to tell the truth).

13 MS. BARR: May it please the Court?

14 THE COURT: Yes, ma'am.

15 DIRECT EXAMINATION BY MS. BARR:

16 Q. Please state your full name for the record.

17 A. Gaye Allen Cooke.

18 Q. And were you subpoenaed to testify in this case?

19 A. I was.

20 Q. Tell me where you work?

21 A. I work at the Durant Children's Center in Florence.

22 Q. What type of facility is that?

23 A. The Durant Children's Center is a child advocacy
24 center. We do all forms of maltreatment against
25 children.

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1 Q. And does that include physical as well as sexual
2 abuse of children?

3 A. And neglect.

4 Q. And neglect.

5 A. Uh-huh.

6 Q. How long have you been employed there?

7 A. Just shy of two years.

8 Q. And what is it that you do there?

9 A. I am the clinical therapist and also clinical
10 evaluator.

11 Q. Can you tell the ladies and gentlemen of the jury a
12 little bit of information about your background, your
13 training, your education and so forth that qualifies you
14 for the position that you hold?

15 A. I have a bachelor's degree in early childhood
16 education. I have a master's degree in Clinical
17 Psychology recognized by the State. I have had 40 hours
18 forensic training which is recognized by the State. I've
19 also had the advanced forensic training recognized by the
20 State. I also had written multiple journals regarding
21 trauma and I'm currently pursuing a doctrine in
22 psychology. And I'm a licensed clinical therapist in the
23 State of South Carolina and North Carolina.

24 Q. Let me ask you if you will tell the ladies and
25 gentlemen of the jury what it is that you do on a day-to-

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1 day basis for the Durant Center in Florence?

2 A. When it comes to forensic evaluations, what I do is
3 children are brought into the agency who have had some
4 type of allegation of maltreatment be it sexual abuse,
5 physical abuse, or -- or neglect. And what happens is I
6 meet with them, evaluate them. And my job is to look at
7 the things that they're presenting as far as their
8 behaviors and to make some type recommendation as far as
9 some judgement call as have they been sexually or
10 physically abused? What kind of treatment do they need?
11 What type of trauma might they experience if they have
12 been sexually abused or what type of treatment they might
13 need to assist them in dealing with the abuse. When it
14 comes to treatment, I do therapy for kids of various
15 allegations that they've had, I'm just helping them work
16 through the trauma that they've gone through and helping
17 them to process the trauma and helping them to become
18 better and not forget the trauma but be able to just be
19 able to become productive citizens.

20 Q. Did I understand you to testify that you had a
21 practice at one point in North Carolina?

22 A. I did.

23 Q. From what year to what year?

24 A. I was in private practice from 2001 to 2004.

25 Q. Okay. And then you moved to South Carolina?

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1 A. I did in 2004.

2 Q. Okay. And you had your practice in North Carolina,
3 did you do some of the same types of assessment and
4 treatment of children as you do here?

5 A. I did.

6 Q. Okay. All right. Now, Ms. Cooke, have you ever
7 testified as an expert witness in the Circuit Courts or
8 Family Courts in the state of South Carolina?

9 A. I have.

10 Q. What about in the state of North Carolina?

11 A. I have.

12 Q. How many times have you testified?

13 A. In both states together?

14 Q. Correct.

15 A. In criminal court, 15, 16 times.

16 Q. Okay.

17 A. Family court, probably 40 or 50 times.

18 Q. And have you been qualified as an expert witness in
19 the field of counseling and treatment of children of
20 sexual abused and/or child sexual abuse trauma recovery?

21 A. I have.

22 Q. Okay. And how many patients have you seen during the
23 course of your career who were alleged victims of
24 maltreatment as you indicated?

25 A. Probably close to a hundred.

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1 MS. BARR: Judge, at this time, we would tender Ms.
2 Cooke as an expert in the field of child sexual abuse
3 counseling and treatment.

4 THE COURT: All right. Mr. Barr, any voir dire of
5 this witness?

6 MR. BARR: No, sir, Judge.

7 THE COURT: Any objection to her qualification in
8 this regard?

9 MR. BARR: No, sir.

10 THE COURT: All right, ladies and gentlemen, and I
11 will qualify this witness as an expert in the field of
12 counseling and treatment of childhood sexual abuse; is
13 that correct, Ms. Barr?

14 MS. BARR: Yes, sir.

15 THE COURT: All right, ladies and gentlemen,
16 typically you will find in cases that a -- that a witness
17 cannot give opinion testimony. For example, such as an
18 eyewitness is called to testify to what that person saw,
19 heard, felt, and things of that nature. That does not
20 require expert testimony. I will tell you, however, that
21 there is a distinction for what we call expert witnesses,
22 and I will charge you more on this later. But if by
23 virtue of the witness's qualifications, training,
24 experience, and so forth, that witness is qualified to be
25 an expert in a particular field, that witness can give

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1 opinions on certain things within that witness's field of
2 expertise. I will tell you, however, that the same
3 rules apply that we discussed earlier or that I discussed
4 with you earlier that you are to give an expert witness's
5 opinion the weight that you think it's entitled to. Just
6 because a witness has been qualified as an expert does
7 not automatically mean that you must accept what that
8 witness's opinion is as true. You can weigh the reasons
9 given for the opinion, the witness's qualifications and
10 things of that nature, and you can use your common sense
11 to determine whether or not you believe what the witness
12 has to say. As with any other witness, you can believe
13 100% of what the witness has to say, you can reject 100%
14 of what the witness has to say, or you can believe parts
15 or -- and reject the rest. And with that instruction.
16 Ms. Barr, you can continue questioning Ms. Cooke.

17 MS. BARR: Thank you, Your Honor.

18 DIRECT EXAMINATION BY MS. BARR RESUMES:

19 Q. Ms. Cooke, let me ask you some questions regarding
20 certain behaviors you've observed in the course of your
21 treatment counseling the children or persons that were
22 abused as children. Are there certain types of quote-
23 unquote typical behaviors that you would expect to see or
24 have seen when you're assessing a person who's alleged to
25 have been maltreated as a child?

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1 A. Yes.

2 Q. Okay. Can you describe what types of behaviors
3 that you observed during the course of your career?

4 A. Oftentimes we'll see an individual who may be
5 withdrawn. We'll see an individual who may exhibit some
6 type of suicidal tendencies. Whether or not they act
7 upon those, it kind of depends. Oftentimes we'll see
8 these symptoms in people who haven't had treatment or
9 maybe who started treatment and maybe treatment was a
10 difficult because it made them re-live some things and
11 they stopped treatment, and we'll often see them be
12 suicidal. It's pretty normal to have people who have had
13 some type of trauma to maybe turn to alcohol or drugs.
14 Oftentimes we'll see people do one of two things: they
15 may run to sexualized behaviors, or they may completely
16 run away from sexualized behaviors. It's a very common
17 to see these people sometimes have difficulties with the
18 law. Maybe they might steal or, you know, drive
19 recklessly. Often when people have been traumatized,
20 what they're looking for is some sense of control.
21 They're looking for something that they can take charge
22 of. Because of the trauma that they've experienced, they
23 feel like they've lost control of their whole life.

24 Q. Okay. It one of the things that you interest --
25 that you indicated that was interesting is you said it's

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1 not uncommon or it's common to see a person who's been
2 abused as a child abuse alcohol or drugs. Tell me that
3 if the goal is to maintain some sort of control of your
4 life, why do -- why do children turn to alcohol or drugs?

5 A. Oftentimes it's -- it's a little hard to comprehend
6 I guess. But oftentimes that's their way of seeking
7 control it's like if I can get a hold of this substance,
8 then you know, it'll either make me to where I won't have
9 to think about the things that have happened to me or
10 maybe it may make me bigger than life where I can control
11 other things that are in my life.

12 Q. Okay. What about a -- thoughts of suicide or
13 attempted suicide, how does that play in terms of a
14 victim of childhood sexual assault?

15 A. You have to think about sexual assault in terms of a
16 traumatic experience. And when people, when individuals
17 experience trauma, what happens is oftentimes they turn
18 to themselves and they look at themselves and they feel
19 hopeless. They may feel like there is no one in their
20 life that is going to understand. Oftentimes, victims of
21 sexual abuse, sexual trauma, will feel like they're
22 alienated. They will have lived a life of secrecy maybe
23 because they didn't want to tell about what happened to
24 them. And it's kind of like, after a while, they just
25 can't take that anymore. And many of them do turn to

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1 suicidal tendencies.

2 Q. Okay. Is it common or uncommon in cases where a
3 person was a victim of a childhood sexual assault to
4 delay reporting the event?

5 A. Yes.

6 Q. Okay. How common is that?

7 A. The latest research tells us that about 69% of child
8 victims often wait to disclose -- many of them wait to
9 disclose until adulthood.

10 Q. Why is that, do you ---

11 A. Well, there's lots of reasons. Some I've already
12 alluded to. What happens is, when someone has been
13 sexually abused; it's like their sense of life has kind
14 of been wounded if we can say that. And it's kind of
15 like they -- they don't know what to do. You know? Many
16 of them turn to themselves, they turn inside. It's like,
17 if I don't talk about it, maybe it didn't happen. And if
18 I tell someone, then that's going to mean lots of things.
19 You know, other people are going to find out; is my man-
20 or womanhood going to be called into effect because I
21 couldn't stop this from happening? There are many, many
22 reasons why kids don't disclose. And most of the time,
23 it's because they don't want to be annihilated. And it's
24 easier to live in secrecy than it is to have people find
25 out what happened to you.

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1 Q. Now, Ms. Cooke, if you're dealing with a child
2 that's been abused by a family member or someone who is
3 in a position of authority, would that have any impact on
4 whether or not the abuse is disclosed right away or
5 whether or not it's disclosed at some later date?

6 A. Oftentimes, what we'll find is most children who are
7 victimized know their offenders, number one. And most of
8 the time it is someone that they do trust. And when we
9 have someone that we trust and they violated that trust,
10 it's very difficult because it's like, okay, if I come
11 out and tell this, number one, I'm going to hurt the
12 person that's done this to me. I'm going to have to come
13 out and talk about what happened. People are going to
14 ask lots of questions. And when you have a relationship
15 with someone, even though that person has violated you,
16 what happens is victims don't want to talk about it
17 because they don't want that relationship to be tainted.

18 Q. Now, have you found that in your course of treatment
19 of adults or just kids, or both?

20 A. The only adults that I treat are like people have
21 brought their children in and maybe, through the course
22 of treatment with their child, they've recognized, you
23 know, I haven't ever told anybody what happened to me ---

24 Q. I see.

25 A. As a rule, I -- I treat children under the age of

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1 18.

2 Q. Okay. And you've indicated that you've treated
3 several individuals who didn't report the child abuse
4 until they were well in their adult life?

5 A. Yes, ma'am.

6 Q. What types of forces, if you will, tells a person to
7 disclose child sexual abuse after some significant period
8 of time has -- has passed?

9 A. Many times we'll see adults who've become parents.
10 And when they become parents, it's kind of like something
11 triggers in their brain. They don't want this to happen
12 to their child, so they go ahead and come out and talk
13 about it because they realize they've got to get
14 themselves together before they can parent properly.
15 Oftentimes, if you're in a community maybe where other
16 people have disclosed, maybe you've seen a trial on TV or
17 if something's on the news where someone has been
18 convicted of sexual abuse or maybe a victim has spoken
19 out, it may trigger something in that person to want to
20 come out and say what's happened to them. It's really
21 hard to tell why people disclose when they -- when they
22 do. It kind of just becomes when they're ready. And,
23 you know, research tells us that many people don't
24 disclose until years and years and years after the abuse.

25 Q. Okay. Is it consistent or inconsistent -- would a

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1 victim be or having a traumatic sexual abuse event occur
2 as a child, is it consistent or inconsistent that at some
3 point once they reach their adult lives that they're more
4 likely to disclose it once they reach an adult age
5 particularly if it's a situation where they know the
6 perpetrator?

7 A. I'm sorry, I don't think I understand the question.

8 Q. If you -- that's okay. That's okay. If the
9 perpetrator of the sexual abuse is either an authority
10 figure in the victim's life or a family member of the
11 victim, is it consistent or inconsistent that a victim of
12 sexual assault will delay reporting given that
13 relationship?

14 A. It's consistent.

15 Q. Ms. Cooke, I believe that you've answered all my
16 questions. Thank you so much for your time. Please
17 answer any questions that Mr. Barr may have for you.

18 CROSS EXAMINATION BY MR. BARR:

19 Q. Ms. Cooke, how are you today?

20 A. I'm fine. Thank you.

21 Q. I'm Charles David Barr. I'm a defense lawyer. And
22 I'm sure you've had, over the years, you've had a whole
23 lot of interaction with defense lawyers, haven't you?

24 A. Yeah.

25 Q. Now, I'm -- with respect to your specific field of

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1 expertise, I believe you indicated that -- that -- that
2 you are a critical therapist in as far as counseling?

3 A. I am.

4 Q. And you do forensic interviews?

5 A. I do.

6 Q. And for -- for the benefit of the jury, what -- what
7 specifically is a forensic interview?

8 A. A forensic interview is done when there have been
9 allegations of some type of maltreatment, be that
10 physical abuse, sexual abuse, emotional abuse, or
11 neglect. And what happens is a child is referred for a
12 forensic evaluation, and the evaluation includes
13 basically that child having a chance to be asked non-
14 leading questions and they're able to talk about
15 different types of touch, different types of maltreatment
16 that they may have experienced. It's just an opportunity
17 for them to tell what has happened to them.

18 Q. And with respect to the forensic interview, from
19 time to time are these interviews recorded?

20 A. They are videotaped. Yes, sir.

21 Q. All right. And -- and what would be the purpose --
22 would you agree that one of the purposes of recording
23 them would be to give the interviewer an opportunity to
24 actually look at the child in -- in the -- in an
25 appropriate setting and perhaps facilitate therapeutic

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1 counseling?

2 A. I'm sorry, I don't understand.

3 Q. Well, would you not agree that -- that one of the --
4 one of the purposes of actually videotaping the interview
5 is to be able to -- to study the interview and make
6 therapeutic decisions concerning counseling a particular
7 child?

8 A. That is one reason. Yes, sir. There are multiple
9 reasons.

10 Q. But that is one?

11 A. That is one.

12 Q. Yeah. Of course, you don't know -- do you know any
13 of the personalities in this case? Do you know *VICTIM*
14 ?

15 A. I don't know any of the personalities from this
16 case.

17 Q. Never met him in your life?

18 A. No, sir.

19 Q. And of course you don't know if he was sexually
20 abused or not, do you?

21 A. I don't even know who he is.

22 Q. So then, with respect to your testimony today, what
23 you've done is you've kind of given us an introductory
24 lesson into the area of therapeutic counseling through
25 forensic gathering of information for people in general?

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1 A. And traumatic responses of sexual abuse.

2 Q. Yes, ma'am. So then, with respect to your
3 testimony, essentially you would agree that to the extent
4 that you've expressed an opinion regarding say, for
5 instance, why a person would not reveal an instance of
6 sexual abuse, your opinions are in general, limited to
7 general application and not to any particular individual?

8 A. Well, my opinions would be based on my studies and
9 my interaction with the patients that I have and have had
10 previously.

11 Q. I see. And you've never spoken to VICTIM ?

12 A. I didn't even know that was his name.

13 Q. Don't even know him. Now, I -- I just have one or
14 two more questions. You were subpoenaed to come to court
15 today?

16 A. Yes, sir.

17 Q. By the prosecution?

18 A. By Ms. Barr, yes, sir.

19 Q. And you've never met VICTIM, you've never read
20 anything he's written, you've never interviewed him, and
21 you've never counseled him?

22 A. No, sir.

23 Q. Thank you, ma'am.

24 THE COURT: Re-direct, Ms. Barr?

25 MS. BARR: Yes, Judge. Just a few follow-up

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1 questions if I may.

2 RE-DIRECT EXAMINATION BY MS. BARR:

3 Q. Ms. Cooke, when you do these forensic interviews,
4 are they normally done or are they exclusively done for
5 children?

6 A. At our office they are, because we're a child
7 advocacy center ---

8 MR. BARR: Objection. Objection. I think we've gone
9 -- that takes us beyond the scope of cross examination.

10 MS. BARR: I disagree, Judge. He asked her
11 specifically about --

12 THE COURT: Let me Rule on the objection. Your
13 objection is outside the scope of cross ---

14 MR. BARR: Yes, sir.

15 THE COURT: And, Ms. Barr, I anticipate what you're
16 is this is in response to his question about not having
17 ever met *VICTIM* and interviewed him and so forth?

18 MS. BARR: And specifically the question that he
19 first asked her about explaining how a forensic interview

20 ---

21 MR. BARR: I'll withdraw the objection, Your Honor.

22 THE COURT: All right, Ms. Barr, you can -- if you'll
23 restate the question, please.

24 MS. BARR: All right. Thank you, Your Honor.

25 Q. Ms. Cooke, you're of course employed at the Durant's

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1 Children's Advocacy Center; is that correct?

2 A. Yes, ma'am.

3 Q. You testified on cross examination about your
4 forensic interview when you have an allegation of sexual
5 abuse; is that correct?

6 A. Yes, ma'am.

7 Q. My question specifically to you was whether or not
8 the interviews are always conducted on children, or are
9 there points in times where they're conducted on adults
10 in the advocacy center?

11 A. The only time they're conducted -- conducted on an
12 adult would be if our SLED agent that we work with, if
13 she comes and does like a mentally retarded or mentally
14 challenged adult. But I do not perform interviews on
15 anybody over the age of 17.

16 Q. Okay. So if this -- if Mr. *VICTIM* reported the
17 sexual assault that happened to him as a child and he
18 reported it when he was an adult, he wouldn't have come
19 see you?

20 A. He would've come to ---

21 MR. BARR: Objection. Improper. Hypothetical.

22 THE COURT: I'll sustain the objection. The witness
23 has stated that he did not come to see her if she
24 would've been able to interview him anyway. I'll sustain
25 that objection.

HEARING

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1 MS. BARR: All right.

2 Q. And you have testified on cross examination that
3 your testimony in this case was based upon your
4 experience and your training and your background?

5 A. Yes, ma'am.

6 Q. Okay. Now, have you ever testified as an expert
7 witness in either South Carolina or North Carolina where
8 you have not specifically treated a particular victim?

9 A. Yes, ma'am.

10 Q. Okay, what was the purpose of you testifying in
11 cases where you've never treated the victim?

12 MR. BARR: Objection to relevancy, Judge.

13 THE COURT: Ms. Barr, your question again is what?

14 MS. BARR: I was asking her ---

15 THE COURT: For her testimony?

16 MS. BARR: Right, in cases where she has not treated
17 the victim.

18 THE COURT: I'll sustain the objection.

19 MS. BARR: Judge, that's all the questions I have.

20 Ms. Cooke, thank you so much. Appreciate it.

21 THE COURT: Re-direct, Mr. Barr? I mean, excuse me -

22 --

23 MR. BARR: No.

24 THE COURT: --- re-cross, Mr. Barr?

25 MR. BARR: No, sir.

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1 THE COURT: Okay. Thank you, ma'am. You may step
2 down. State can call its next -- any objection to this
3 witness being excused?

4 MR. BARR: No -- no objection.

5 MS. BARR: No, Judge. We'd ask that she be excused,
6 sir.

7 THE COURT: You can be excused if you'd like.

8 MS. BARR: Judge, we'd call Pam at this time.
9 (Witness is sworn to tell the truth).

10 DIRECT EXAMINATION BY MS. BARR:

11 Q. Ma'am, let me get you to state your full name for
12 the record.

13 A. Pamela J.

14 Q. And, Ms. , where do you live?

15 A. Surfside Beach.

16 Q. That's in Horry County?

17 A. Yes, ma'am.

18 Q. And who lives there with you?

19 A. My husband and two other children.

20 Q. Now, is your husband in the courtroom?

21 A. Yes, ma'am.

22 Q. That's Mr. Wade ?

23 A. Yes, ma'am.

24 Q. How long have the two of you been married?

25 A. 14 years.

HEARING

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- 1 Q. Okay. And your son is **VICTIM** ; is that
2 correct?
- 3 A. Yes, ma'am.
- 4 Q. Now, is he your oldest?
- 5 A. Yes, ma'am.
- 6 Q. Okay. And when was he born?
- 7 A. July 1987.
- 8 Q. So he is now 19 years old; is that correct?
- 9 A. Yes, ma'am.
- 10 Q. Where does he live?
- 11 A. He lives in Surfside also.
- 12 Q. Okay, but he's not staying at home with mom and dad?
- 13 A. No.
- 14 Q. Okay. And, I'm sorry, tell me how old your children
15 are, the other two children that live with you?
- 16 A. One is 17 and one is 12.
- 17 Q. Okay. Ms. , do you know the Defendant Robert
18 Troy Taylor?
- 19 A. Yes, ma'am.
- 20 Q. Tell the ladies and gentlemen of the jury how it is
21 that you know him.
- 22 A. He was the pastor of our church.
- 23 Q. What church was that?
- 24 A. Low Country Community Church.
- 25 Q. Where is that located?

HEARING

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1 A. In Murrells Inlet.

2 Q. At that time, was that a Baptist Church?

3 A. It was before he -- he came and took over, yes.

4 Q. And how long had you been a member of that church?

5 A. I wasn't a member until he came.

6 Q. And what year was it, if you recall, that he came
7 and was the pastor of your church?

8 A. I think it was '97. It could've been -- I think it
9 was 1997.

10 Q. 1997. All right. And when you became a member of
11 the church, was it also true that your husband and sons
12 were also members?

13 A. My husband was not.

14 Q. Okay. What about your boys?

15 A. Two of them were, yes.

16 Q. Okay. Which two were?

17 A. ~~VICTIM~~ and David, my middle son.

18 Q. Now, tell me what type of relationship did you have
19 with Robert Troy Taylor while he was pastor at your
20 church.

21 A. We had a close relationship.

22 Q. Did you confide in him as a member of his
23 congregation?

24 A. Yes, I did.

25 Q. Did you trust him?

HEARING

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1 A. Yes, I did.

2 Q. Now, did there come a time back in 1998 when you
3 allowed your son to accompany the Defendant on a camping
4 trip in Williamsburg County?

5 A. Yes, ma'am.

6 Q. Okay. I'm going to show you what's been admitted
7 into evidence as State's Exhibit Number 3, I believe.

8 Your Honor, may I approach the witness?

9 THE COURT: Any objection?

10 MR. BARR: I have no objection.

11 THE COURT: State's Number 3.

12 MS. BARR: May I approach the witness?

13 THE COURT: Yes, ma'am.

14 Q. Ms. , I'm going to show you what's been marked
15 as State's Exhibit 3 and ask if you recognize that
16 particular exhibit.

17 A. Yes, I do.

18 Q. Okay. Tell the jurors what it is.

19 A. It's a church bulletin.

20 Q. Did you all have those church bulletins every year,
21 or I should say every Sunday?

22 A. Yes, ma'am.

23 Q. Okay. And what does the bulletin do, does it
24 outline different church activities?

25 A. Yes, ma'am.

HEARING

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1 Q. And taking you back to November of 1998, is it
2 outlined that there was a scheduled camping trip during
3 that time?

4 A. Yes, ma'am.

5 Q. All right. And if you will, just show me where it
6 is on that particular exhibit.

7 MR. BARR: Objection. Did she move it into evidence?

8 THE COURT: She did. Well, let me ask -- that's what
9 I asked, if you had any objection to it.

10 MR. BARR: Oh....

11 THE COURT: Do you have any objection to it?

12 MR. BARR: No.

13 THE COURT: All right. It's in evidence as Exhibit
14 3.

15 Q. I'm sorry, point to the date. And how is it
16 characterized on the particular bulletin? I need you to
17 call out how it's characterized for me, please.

18 A. November 6th and 7th youth group camping excursion.

19 Q. Okay. All right.

20 MS. BARR: Move to publish State's Exhibit Number 3.

21 THE COURT: What's the year on that?

22 MS. BARR: 1998.

23 THE COURT: All right, ladies and gentlemen, the
24 Exhibit is going to be published to you, which means in
25 general terms it's going to be passed around. I will

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1 instruct all of you that while you are reviewing the
2 document to do two things. One is to review the
3 document, and pay very close attention to the witness's
4 testimony as you review it. Keep in mind that this
5 Exhibit will be with you in the jury room when you
6 deliberate this case. All right.

7 MS. BARR: Thank you.

8 Q. Ma'am, that bulletin also indicates that the
9 Defendant was the senior pastor of the church at that
10 time?

11 A. Yes, ma'am.

12 Q. And you have testified that in November of 1998 you
13 allowed your son to go on an overnight camping trip with
14 the Defendant?

15 A. Yes, ma'am.

16 Q. Were there other children who had gone on the
17 camping trip as well?

18 A. Yes, ma'am.

19 Q. How many other children, if you know?

20 A. Maybe six.

21 Q. Okay. Were there any other adults? And if you
22 don't remember, that's fine.

23 A. I don't remember.

24 Q. Okay. Prior to this camping trip, had you ever had
25 any concerns at all about allowing your child to go on a

HEARING

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1 camping trip, or go anywhere for that matter, with the
2 Defendant?

3 A. No.

4 Q. Did you trust him like you would trust a family
5 member with your child?

6 A. Yes, I did.

7 Q. And of course he was a lot taller and a little
8 heavier than he was back then. How old would he have
9 been in November of 1998?

10 A. 11.

11 Q. 11 years old?

12 A. Yes, ma'am.

13 Q. And at my request, did you make copies of
14 photographs showing how he appeared at age 11?

15 A. Yes, ma'am.

16 Q. And have you turned those photographs over to me?

17 A. Yes, ma'am.

18 Q. All right. Now, I'm going to show you what's been
19 marked as Plaintiff's Exhibits 1 and 2 and ask you if you
20 recognize these documents.

21 A. Yes, ma'am.

22 Q. All right. What are they? I need you to talk about
23 them by number. So look down at the corner and see the
24 number.

25 THE COURT: First, the question was what are they.

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1 Are they in without objection, Mr. Barr?

2 MR. BARR: Yes, sir. I don't object to them, Judge.

3 THE COURT: All right. Exhibits 1 and 2 are in
4 evidence without objection. Ms. Barr, I apologize for
5 interrupting.

6 MS. BARR: Absolutely. No problem.

7 Q. Now, tell me what's State's Exhibit Number 1?

8 What's depicted in State's Exhibit Number 1?

9 A. Picture of my son.

10 Q. Okay. And that was taken around the time that he
11 was 11 years old?

12 A. Yes, ma'am.

13 Q. All right. And what about State's Exhibit Number 2?
14 I need you to tell me what it is.

15 A. It's a picture of my son.

16 Q. Taken around the same time?

17 A. Yes, ma'am.

18 Q. What is he doing in State's Exhibit Number 2?

19 A. He's posing for a basketball picture.

20 Q. Okay.

21 MS. BARR: Your Honor, at this time, the State would
22 publish Exhibits 1 and 2.

23 THE COURT: All right.

24 Q. Prior to this period of time as VICTIM was growing up
25 and when he was a toddler and started kindergarten and

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1 elementary school, how would you characterize his
2 childhood?

3 A. Very happy.

4 Q. Had a normal childhood?

5 A. Yes, ma'am.

6 Q. Both parents grew up in the home together?

7 A. Yes, ma'am.

8 Q. Do you and your husband work? Were you working
9 during the time he grew up?

10 A. Yes, ma'am.

11 Q. We see that in State's Exhibit Number 2 that he was
12 involved in baseball; is that correct?

13 A. Yes, ma'am.

14 Q. Was he involved in any other activities?

15 A. Yes, ma'am.

16 Q. What types of other activities were he involved in?

17 A. He played soccer, and he played football. And he
18 was involved with the church youth group.

19 Q. Okay. All right. Was he heavily involved there?

20 A. In the church youth group?

21 Q. Yes, ma'am.

22 A. Yes, ma'am.

23 Q. Now, ma'am, when did you become aware that an
24 allegation had been made against the Defendant by your
25 son that he was raped?

HEARING

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1 A. May of 1995.

2 Q. 1995?

3 A. I mean 2005, I'm sorry.

4 Q. May of 2005?

5 A. Yes.

6 Q. And you have to be very specific in your answers,
7 okay, so make sure you hear my question. When you
8 discovered that, what if anything did you advise your son
9 to do or what did you encourage your son to do as a
10 result of that, of learning that?

11 A. To go and file a police report.

12 Q. Now, you all originally filed the police report in
13 Georgetown County; is that correct?

14 A. Yes, ma'am.

15 Q. All right. And at some point later, you met with I
16 believe Sergeant Rogers?

17 A. Yes, ma'am.

18 Q. And you were ---

19 MR. BARR: Objection to hearsay, Your Honor.

20 THE COURT: I'll overrule your objection to the
21 extent that she met with the -- the Sergeant, but of
22 course she can't testify to what the Sergeant said.

23 MS. BARR: Absolutely, Judge. I understand that.

24 Q. You were advised to file the police report with
25 Sergeant Rogers here in Williamsburg County?

HEARING

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1 A. Yes, ma'am.

2 Q. Did you come to Williamsburg County to meet with
3 her?

4 A. Yes, ma'am.

5 Q. Your son came with you?

6 A. Yes, ma'am.

7 Q. Now, between the time that the -- your child was on
8 the camping trip here and the time that you learned that
9 he had indicated that the Defendant had raped him, did
10 you notice any changes at all in his behavior?

11 A. Yes.

12 Q. Okay.

13 A. Yes.

14 Q. I know it's difficult. I need you to tell me what
15 types of changes that you noticed.

16 MR. BARR: We objected to the hearsay that's about to
17 come in from a law enforcement officer. And it came in.
18 And I move to strike that.

19 THE COURT: All right, what testimony is that that
20 came in?

21 MR. BARR: The testimony concerning what she was
22 advised to do.

23 THE COURT: That was from -- that was from Georgetown
24 County?

25 MR. BARR: Yes, sir.

HEARING

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1 THE COURT: All right. Well, I don't think that
2 that's offered for proof of the matter asserted. I'll --
3 I'll overrule that objection, Mr. Barr. In essence, the
4 witness testified that she came to Williamsburg County to
5 meet with Sergeant Rogers. Is that right?

6 MS. BARR: That's correct, Judge.

7 THE COURT: All right. Overruled.

8 Q. Ms. , I think the last question that I posed
9 to you was did you notice any types of behavioral changes
10 in your son between the time this camping trip took place
11 and the time he reported officially what had happened to
12 him?

13 A. Yes, ma'am.

14 Q. All right. And I need you to tell me the types of
15 changes that you noticed in his behavior during that
16 period of time.

17 A. He was very distant with everybody. Very distant.
18 And he turned to drugs and alcohol.

19 Q. What types of drugs was he taking?

20 A. He was -- marijuana -- marijuana, and he was taking
21 Xanax and stuff like that.

22 Q. Now, how old was he during the time you noticed that
23 he was abusing drugs and alcohol?

24 A. 14.

25 Q. Did you have any idea during that period of time he

HEARING

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- 1 was doing these things what happened to him?
- 2 A. No, ma'am.
- 3 Q. Was he ever -- did he ever receive any counseling?
- 4 A. No, ma'am.
- 5 Q. Tell me why that was.
- 6 A. Just didn't.
- 7 Q. Okay. Was there ever a point in time where he was
- 8 in your presence that he attempted suicide?
- 9 A. Yes, ma'am.
- 10 Q. How did he do it?
- 11 A. He took a lot of pills.
- 12 Q. What types of pills?
- 13 A. Xanax.
- 14 Q. Is he currently receiving any counseling?
- 15 A. No, ma'am.
- 16 Q. Has he received any counseling within the last two
- 17 years?
- 18 A. He's been to see someone, yes.
- 19 Q. Okay. Where has he gone?
- 20 A. In Myrtle Beach, Strand Psychiatric Associates.
- 21 Q. Grand Strand Psychiatric Associates?
- 22 A. It's Strand Psychiatric Associates.
- 23 Q. Oh, okay. Anybody else?
- 24 A. He's been to LC3 to talk with Robbie, the past there
- 25 now.

HEARING

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- 1 Q. Have you noticed a change in his behavior since he
2 went to counseling?
- 3 A. Yes, ma'am.
- 4 Q. He works full time?
- 5 A. Yes, ma'am.
- 6 Q. Is he married or he's about to get married?
- 7 A. He's about to get married.
- 8 Q. Now, do you have any grand babies?
- 9 A. Yes, ma'am. I do.
- 10 Q. And how many grand babies do you have?
- 11 A. One.
- 12 Q. Okay. Is that *VICTIM*'s daughter?
- 13 A. Yes, ma'am.
- 14 Q. How old is she?
- 15 A. She just turned a year old.
- 16 Q. What was your reaction when you learned that your
17 son had indicated that the Defendant had raped him?
- 18 A. Shocked.
- 19 Q. Okay.
- 20 A. Shut down I guess.
- 21 Q. Did you ever have any reason to believe that he was
22 capable of doing something like that to your child?
- 23 A. No.
- 24 Q. I may have asked you this before, but I want to make
25 sure I've covered it. This camping trip, was that the

HEARING

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1 first time ~~VICTIM~~ had been away overnight from you?

2 A. Yes.

3 Q. Did you ever confront the Defendant about what had
4 happened to your son?

5 A. No.

6 Q. You described your relationship with him as being
7 close.

8 A. Yes, ma'am.

9 Q. During this period of time when you were a member of
10 the church in which he pastored, how many times do you
11 think you'd see him in a given month?

12 A. Every day.

13 Q. Every day?

14 A. Every day.

15 Q. Why is it every day? How -- how is it that it was
16 so often?

17 A. His mother had a daycare there, and I worked for his
18 mother.

19 Q. How often would ~~VICTIM~~ have seen you interact with the
20 Defendant?

21 A. Every day.

22 Q. Would it have been obvious to him that you trusted
23 the Defendant?

24 MR. BARR: Objection.

25 THE COURT: Sustained.

HEARING

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1 Q. Did he know about the closeness that you and the
2 Defendant shared?

3 A. Yes.

4 Q. Ms. , I believe that's all the questions I
5 have for you at this time. If you will, please answer
6 Mr. Barr's questions.

7 THE COURT: Mr. Barr?

8 MR. BARR: Thank you, Judge.

9 CROSS EXAMINATION BY MR. BARR:

10 Q. Ms. , I don't think that we've ever met
11 before, but I'm Charles David Barr. And of course you
12 know by now that I'm Mr. Taylor's lawyer. I've just got
13 a couple questions I want to ask you. I want to start
14 with State's Exhibit Number 3. But before I do that, I
15 want to make sure that, as I understand it, you were a
16 parishioner at the church at which Troy was pastor?

17 A. Excuse me?

18 Q. You were a parishioner, a member, of the church that
19 Troy pastored?

20 A. Yes.

21 Q. And at the time that you became a member,
22 approximately how many members did the church have?

23 A. Maybe 40.

24 Q. Are you still a member?

25 A. Am I still a member?

HEARING

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1 Q. Yes, ma'am.

2 A. Not to my knowledge.

3 Q. Well, when did you change your membership?

4 A. Usually they just kind of drop you after so many
5 years.

6 Q. So you never changed, actually changed your
7 membership from that church?

8 A. No.

9 Q. And at the time that you stopped attending the
10 church, approximately how many members did they have?

11 A. A good bit.

12 Q. Five, 600? 700?

13 A. Four or 500, a good bit.

14 Q. All right. Now -- now, if you would, take a look at
15 -- at State's Exhibit Number -- Number 3. Here it is.

16 And -- and -- and I would assume that flyer -- and I'm
17 going to call it a flyer -- was issued by the authorities
18 at the church where Troy was pastor, whoever they were;
19 is that correct?

20 A. I don't understand the question.

21 Q. Well, let me rephrase it. With respect to
22 generating that piece of paper, would you not agree that
23 as far as you know and as a member of the church, that --
24 that -- that flyer was prepared by the youth auxiliary at
25 the church?

HEARING

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1 A. The flyer?

2 Q. Yes, ma'am.

3 A. By the youth?

4 Q. By the youth auxiliary at the church?

5 A. By the ---

6 Q. By whoever's responsible for programming at the
7 church for youth?

8 A. Yes.

9 Q. All right. Now -- now to the best of your
10 recollection and as indicated on that flyer, who actually
11 was in charge of the youth activities?

12 A. Troy Taylor, I guess.

13 Q. Pardon?

14 A. Troy Taylor.

15 Q. Does it say Troy Taylor on there?

16 A. Well, I'm looking. That's -- well, there's a
17 children's ministry.

18 Q. Well, children's ministry at the time, you say,
19 right?

20 A. Right.

21 Q. And as far as the children's ministry, who was in
22 charge of the children's ministry?

23 A. His mother.

24 Q. Troy's mother. Ms. Linda Taylor?

25 A. Right.

HEARING

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1 Q. All right. So now, with respect to organizing the
2 youth trip, as far as you know, that trip was actually
3 organized by Troy's mother, Ms. Linda Taylor, who is
4 seated -- let's see, directly next to that gentleman that
5 just raised his -- her hand. As far as you know?

6 A. As far as I know what?

7 Q. The trip was organized by Ms. Linda Taylor?

8 A. As far as I know.

9 Q. Yes, ma'am. It -- it was organized by Ms. Linda
10 Taylor, wasn't it? Her name is written right on there,
11 isn't it?

12 A. It doesn't say that she organized the ---

13 Q. But who does it say ---

14 A. --- youth ---

15 Q. Who does it say in charge of the youth ministry?

16 A. It says pray for a team.

17 Q. Let's see. It says ministries -- children's
18 ministry, Linda Taylor with a telephone number. That's
19 written on there, isn't it?

20 A. Exactly.

21 Q. All right. So now, you -- you -- you testified on
22 direct examination that, of course, that -- that you
23 trusted Mr. Taylor, talked about Troy Taylor, and you --
24 you allowed your son to go on a camping trip with him.
25 Now that's really not quite correct, is it?

HEARING

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1 A. What is not correct?

2 Q. You didn't allow your son to go on a camping trip
3 with Mr. Troy Taylor, did you?

4 A. Yes, I did.

5 Q. Did you see Mr. Troy Taylor take your son from the
6 church? Or where did you deliver your son to Troy
7 Taylor?

8 A. I watched him drive off the church property, and I
9 watched him drive back on to the church property.

10 Q. I see. When did you watch him drive off from the
11 church property?

12 A. They left on a Friday when I was working at the day
13 care.

14 Q. Are you sure about that?

15 A. Yes.

16 Q. And that was on November -- that was on November --
17 I see on here it says, youth camp excursion. Now, is
18 that the same activity that you're saying that you gave
19 your son to Troy Taylor to take camping?

20 A. Yes.

21 Q. November 6th. And he brought him back -- what time
22 did he leave on November 6th?

23 A. It was between five and six. It was a Friday.

24 Q. Friday at five or six in the afternoon?

25 A. Right.

HEARING

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1 Q. And he brought him back what time now?

2 A. Five or six Saturday.

3 Q. Five or six Saturday.

4 A. Which was the 7th.

5 Q. And you -- you saw Mr. Troy Taylor bring your son
6 back and deliver him back -- did he deliver him to the
7 church or your house?

8 A. To the church.

9 Q. And that would've been on November 7th of 1998?

10 A. Yes, sir. When he delivered him back.

11 Q. Now, was your son acting unusual in any way when he
12 brought him back? You did have an opportunity to observe
13 him?

14 A. Observe him?

15 Q. Yes, ma'am. You said he brought him back and
16 delivered him to you.

17 A. Yeah, I was there.

18 Q. Well, you did receive your son ---

19 A. I didn't have any reason to observe him ---

20 Q. No, ma'am. ---

21 A. --- in any way.

22 Q. --- what I said was, was he acting in any way
23 unusual to you? You were thoroughly familiar with his
24 behavior; is that correct?

25 A. At the time?

HEARING

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1 Q. Yes, ma'am.

2 A. Well, that's a good -- I don't remember.

3 Q. You don't remember?

4 A. I don't remember how he was supposed to, you know,
5 be acting when he came back.

6 Q. No, ma'am. I didn't say how he was supposed to be
7 acting. I just said was he acting in any way unusual to
8 you as if say, for instance, as he had been traumatized
9 by a -- a sexual assault?

10 A. No. Not to my knowledge.

11 Q. And of course he would've been placed back,
12 according to you, in your custody? Is that correct?

13 A. Yes.

14 Q. Now -- now you said that he went on a camping trip.
15 Now, you didn't go with him, did you?

16 A. No.

17 Q. So obviously, would it be fair to say that as far as
18 where they went, you have no knowledge where they went?

19 A. I have knowledge of where they went.

20 Q. Did you go?

21 A. I did not go, no.

22 Q. And would you not agree that if you think that
23 you've got any knowledge, it would be something that
24 somebody else told you? Wouldn't you agree with that?

25 A. My son, yeah, what my son told me.

HEARING

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1 Q. Well, I didn't want to go there, but you've said it
2 now. So -- so -- so that's your assertion that he went
3 to Williamsburg County on a camping trip is based on what
4 your son told you?

5 A. Yes.

6 Q. I see. So then, I'll ask you again. With respect
7 to where your son may have gone, if he went, you don't
8 know where he went, do you? Of your own knowledge?

9 A. Except for what my son said? Is that what you're
10 asking?

11 Q. No, I'm asking other than what your son told you,
12 you don't know where -- where he went, if he went
13 anywhere at all, do you?

14 A. I know he went somewhere.

15 Q. But you don't know where, do you?

16 A. Well, what we were told was the other side of
17 Andrews.

18 Q. Well, what I'm talking about, the question is, do
19 you know, and the answer is you really don't know, do
20 you?

21 A. I really don't know where they went?

22 Q. Yes, ma'am.

23 A. I know where they went.

24 Q. Well, I mean you didn't go with them.

25 A. Of course I didn't go with them.

HEARING

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1 Q. And you said that you just answered the question
2 based on what your son told you. And I'm just curious as
3 to whether you will admit that you don't know where they
4 went. All right. I'm -- I'm ... let me ask you this.
5 Now, the State's Exhibit Number 3 says youth group
6 excursion. Youth group camping excursion; is that
7 correct?

8 A. Yes, sir.

9 Q. And as far as you know, how many people
10 approximately were in the youth group at your church? As
11 far as you know?

12 A. Six or seven.

13 Q. Six or seven?

14 A. Yes, sir.

15 Q. And were they all males?

16 A. Yes, sir.

17 Q. You -- you don't have any young females attending
18 your church that are part of the youth group?

19 A. At the time?

20 Q. Yes, ma'am.

21 A. Not to my knowledge.

22 Q. Not to your knowledge?

23 A. If there was, they weren't invited to go on an all-
24 male camping trip.

25 Q. Well, how -- where did this -- how did this become

HEARING

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1 an all-male trip? It was not an all-male trip, was it?

2 It was a camping trip for youth, wasn't it?

3 A. It was a camping trip for youth.

4 Q. And it wasn't all male, was it?

5 A. That's all that went.

6 Q. Well, are you telling us that on November 6th, you
7 gave your son to Mr. -- to Troy. You saw him get in the
8 vehicle -- what kind of vehicle was it now?

9 A. It was a van.

10 Q. A van? And all of the people on the van were males?

11 A. Yes.

12 Q. Ma'am?

13 A. Yes, sir.

14 Q. Now, you -- you indicated earlier that -- that when
15 your son was returned, however he got back from this
16 camping trip, he did not exhibit any kind of unusual
17 behavior?

18 A. Not that I can remember, no.

19 Q. All right. But at some point, he started using
20 drugs, he tried to kill himself -- was he smoking
21 marijuana or ---

22 A. Yes.

23 Q. And you knew about that?

24 A. Yes.

25 Q. And what -- you -- you went to him and told him stop

HEARING

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1 smoking the marijuana?

2 A. Yes.

3 Q. You did?

4 A. Yes, sir.

5 Q. And he didn't stop?

6 A. Not at the time.

7 Q. Well ---

8 A. Not to my knowledge. I mean, you know, kids do what
9 they do.

10 Q. Well, now, I'm sure you must have gotten really
11 concerned at that point and -- and thought that perhaps
12 it would be necessary for you to seek some kind of
13 professional help for him, did you -- smoking marijuana
14 and trying to commit suicide? You -- you -- did you --
15 did you consider getting some help for him?

16 A. Yes.

17 Q. But you did not?

18 A. No, sir.

19 Q. All right. Now, Ms. , and I don't want to be
20 difficult, but I'm sure you understand the nature and
21 importance of these proceedings. When did you -- you
22 didn't notice anything unusual about your son you said
23 when he came back from this trip when he was supposedly
24 sexually assaulted. And that was in -- that would've
25 been November 6th or 7th of 1998. When did you first

HEARING

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1 detect some kind of sign or something that something was
2 not just quite right with your son?

3 A. Age 14.

4 Q. So between 11 and 14, you never noticed anything
5 unusual and any kind of unusual behavior even towards
6 Troy or the church from your son?

7 A. No, not at the time.

8 Q. And surely, if you had, you would've inquired about
9 it, wouldn't you?

10 A. Yes.

11 Q. Now, I've just got a few more questions. Now, when
12 you find out that your son, in addition to smoking
13 marijuana, was abusing the Xanax, were they prescription
14 drugs? They weren't prescription drugs, were they?

15 A. He got them from school.

16 Q. Got them from school. And they weren't prescription,
17 so they were illegal?

18 A. As far as I know.

19 Q. Ma'am? As far as you know?

20 A. As far as I know, yeah.

21 Q. And I'm sure that you -- you at some point, you
22 inquired of him where you getting these illegal drugs?
23 You must have asked him that, or did you?

24 A. Yes, I did.

25 Q. And of course I'm sure you insisted on an answer.

HEARING

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1 Did you get one?

2 A. Yes, I did.

3 Q. And based on the answer you got, did you put a stop
4 to him getting, at 14, illegal Xanax?

5 A. He didn't do illegal Xanax at 14.

6 Q. What ---

7 A. Not that I knew about. This was 17.

8 Q. 17?

9 A. Yes.

10 Q. Put a stop to it?

11 A. Yes. To the best of my knowledge.

12 Q. To the best of your knowledge?

13 A. Yes.

14 Q. I see. So then, insofar as you stopped him to the
15 best of your knowledge, would you not agree that what
16 you're really saying is you don't know whether he stopped
17 the drugs or not?

18 A. Yes.

19 Q. You do know? Or you don't know?

20 A. I do know.

21 Q. So he stopped with drugs when he was 17? And he
22 stopped because you asked him to; is that -- is that
23 correct?

24 A. Yes.

25 Q. Now, do you know whether he was still also smoking

HEARING

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1 marijuana at 17?

2 A. Do I know?

3 Q. Yes, ma'am.

4 A. He was smoking marijuana at 17.

5 Q. And did you tell him to stop the marijuana smoking?

6 A. Yes.

7 Q. And did he stop the marijuana smoking?

8 A. He stopped.

9 Q. Now, you don't know when he started taking the Xanax
10 and smoking the marijuana, do you? I mean, you
11 discovered at some point that he was using ---

12 A. Right.

13 Q. You don't know when he got started, do you?

14 A. No.

15 Q. But whatever made him start, you put an end to it by
16 simply telling him stop using illegal drugs; is that
17 correct?

18 A. Yes.

19 Q. Now, did he ever give you any excuse for abusing and
20 using drugs?

21 A. Just his friends did it.

22 Q. Because his friends did it. So then your son was
23 running around and mixed up with a whole bunch of young
24 people who were doing pot and doing all other kind of
25 drugs, and they all went on that excursion with Mr.

HEARING

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1 Taylor?

2 A. No.

3 Q. Would you not agree that they were doing it because
4 they liked it and enjoyed it?

5 MS. BARR: Objection. Calls for speculation. She
6 can't testify as to why ---

7 MR. BARR: I'll rephrase the question. I'll
8 rephrase.

9 THE COURT: Objection sustained. You can rephrase
10 it.

11 Q. Did it ever occur to you that your son was playing
12 you?

13 A. Excuse me?

14 Q. Did it ever occur to you that your son was playing
15 you?

16 A. Playing me?

17 Q. Yes, ma'am.

18 A. What do you mean by that?

19 Q. Well, you -- you knew he was doing something
20 illegal. And he was doing it for quite some time. And
21 of course at some point you say that you got him to stop.
22 And I'm sure he gave you some rationale as to why he was
23 doing it; did he not?

24 A. What teenager doesn't?

25 Q. Ma'am?

HEARING

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1 A. What teenager doesn't? I don't call playing me, but
2 that's your choice of words, okay.

3 Q. Well, so you feel like all the teenagers in the
4 church was using marijuana and using Xanax and trying to
5 kill themselves?

6 A. You asked me about his friends. You didn't say the
7 church.

8 Q. Well, I'm -- the young people in the church.

9 A. You're asking me?

10 Q. You -- you don't know of any other of his friends in
11 the youth group that he was smoking marijuana with, do
12 you? In the youth group?

13 A. I've never asked.

14 Q. Of course if you had known about something like
15 that, you would've brought it to the attention of the
16 pastor and put a end to it, you would have done that,
17 wouldn't you?

18 A. Oh, yes. Of course.

19 Q. So then it's apparent, would you not agree, that
20 your son had other friends outside of the friends that he
21 associated with in the church?

22 A. Yes.

23 Q. Thank you. I have nothing further at this time.

24 THE COURT: Re-direct, Ms. Barr?

25 MS. BARR: Just a few questions, Judge, if I may.

HEARING

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RE-DIRECT EXAMINATION BY MS. BARR:

1 Q. Ms. during this period of time when you've
2 indicated that you noticed changes in *VICTIM*'s behavior,
3 was there any other significant event going on in your
4 family like separation, divorce, someone dying that could
5 possibly explain this behavior? I need you to speak up
6 for me.

7
8 A. No.

9 Q. All right. Have I -- and I certainly don't mean to
10 offend you by my question, but have you and your husband
11 ever physically abused *VICTIM*?

12 A. No.

13 Q. You indicated that he was taking the alcohol and the
14 marijuana, what happened to him as a result of his
15 ingesting those substances? What would he -- would he
16 become hyperactive? Would he become sleepy? Moody?
17 What types of behaviors would he exhibit as a result of
18 taking those things?

19 A. Withdrawn.

20 Q. Okay.

21 A. And very moody.

22 Q. Okay. What about when he took the Xanax, what
23 impact would that have on him?

24 A. He was very withdrawn.

25 Q. Now, do you know what Xanax is?

HEARING

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1 A. It's a -- it helps calm you down.

2 Q. Okay. Is it an antidepressant?

3 A. Xanax?

4 Q. Yes.

5 A. Not to my knowledge.

6 Q. All right. Now, how old was ~~VICTIM~~ when this was
7 reported to law enforcement?

8 A. When what ...

9 Q. The crime that the Defendant was charged with, how
10 old was he when he reported it?

11 A. 17.

12 Q. He was 17 years old?

13 A. Yes, ma'am.

14 Q. Did he get counseling from, I think you said Strand
15 Psychiatric Services, was that before or after it was
16 reported?

17 A. After.

18 Q. What about the -- you indicated that he also did
19 some form of counseling through the current pastor of the
20 church; is that correct?

21 A. Yes, ma'am.

22 Q. All right. And that happened after this incident
23 was reported?

24 A. Yes, ma'am.

25 Q. Since he's gone through that counseling process,

HEARING

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1 have you ever seen him abuse drugs or alcohol since that
2 time?

3 A. No.

4 Q. He works full time?

5 A. Yes, ma'am.

6 Q. And you indicated that he has a daughter, and he's
7 engaged to be married?

8 A. Yes, ma'am.

9 Q. Did the counseling appear to have helped him resolve
10 some of his issues?

11 A. Yes, ma'am.

12 Q. Did you know of any of his friends who he was
13 associating with at the time, have you ever known them to
14 attempt suicide?

15 A. No.

16 Q. Do you know how old Mr. Taylor was at the time this
17 was reported?

18 A. No, ma'am.

19 Q. Okay. How old is he now; do you know?

20 A. No, ma'am.

21 Q. Was he at least 30 when this happened?

22 A. Yes, ma'am.

23 Q. 30 years old?

24 A. I'm thinking.

25 THE COURT: Re-cross, Mr. Barr?

HEARING

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1 RE-CROSS EXAMINATION BY MR. BARR:

2 Q. Ms. , you can say that you -- that there
3 weren't any other problems going on in your family. And
4 you specifically said there was no problem with you and
5 your husband. Now, that's -- that's not quite right, is
6 it? I mean, there were -- there were substantial
7 problems, weren't there?

8 A. Substantial?

9 Q. Yes, ma'am. You were -- weren't you in counseling?

10 MS. BARR: Objection. Relevance.

11 THE COURT: I don't know the --- can you all come up
12 just a minute.

13 (Off the record bench discussion).

14 THE COURT: All right, Mr. Barr, you can continue.

15 MR. BARR: Thank you, Judge.

16 Q. You -- during that time, you and your husband were
17 contemplating divorce?

18 A. No.

19 Q. Wasn't he having an affair?

20 MS. BARR: Objection. Relevance, Judge.

21 THE COURT: I think the line of questioning is
22 appropriate to a degree. Mr. Barr, if you would
23 rephrase the question. There has to be some link to what
24 *VICTIM* may have known. And I think this witness can
25 accomplish that.

HEARING

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1 Q. During the time that you said that you started
2 noticing that somewhat unwholesome behavior, were you
3 having some marital difficulty?

4 A. Little bit.

5 Q. And does your son know about these marital
6 difficulties?

7 A. No, sir.

8 Q. And, really, you don't think he does. You don't
9 know whether he knew or not, do you?

10 A. I hope he didn't know.

11 Q. So -- so whatever it was, the difficulties, in so
12 much as you hope he didn't know, if he knew, you wanted
13 it kept from him; is that correct?

14 A. That's correct.

15 Q. So you concealed it?

16 A. Excuse me?

17 Q. You concealed it from your son? Or you thought you
18 were concealing it?

19 A. Excuse me?

20 Q. You thought you were concealing you and your
21 husband's difficulties from him?

22 A. I guess.

23 Q. I have nothing further.

24 THE COURT: All right. Ms. Barr, anything else from
25 this witness?

HEARING

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1 MS. BARR: No, Your Honor.

2 THE COURT: Thank you, ma'am. You can step down.

3 All right, Ms. Barr, any other witnesses for the State?

4 MS. BARR: Judge, not today. *VICTIM*s going to be the
5 next witness. He's going to be kind of lengthy. And I
6 think the jury would rather call him in the morning.

7 THE COURT: Is there anybody on the panel that needs
8 to leave at five or -- all right, your name, sir?

9 JUROR: John Thomas.

10 THE COURT: And where do you have to be?

11 JUROR: I have to be at work at six.

12 THE COURT: All right. We're going to concluded,
13 ladies and gentlemen, for today. The next witness I am
14 told is going to take quite a long time. I'm going to
15 ask you to leave at this time and do not discuss the case
16 among each other or among your family members, coworkers
17 where you go to work, or anyone else for that matter.
18 You will find that a lot of people will show a lot of
19 curiosity about what you're doing here today and this
20 week. It is certainly fine for you to tell folks that
21 you are on a jury, but tell those persons if they inquire
22 further that you are bound by an oath that you are not to
23 discuss this case. I expect you to abide by that oath.
24 And I know that you will. Again, do not discuss the case
25 among yourselves. Do not begin to form or express any

HEARING

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1 opinions in your own mind, because you've not heard all
2 the evidence. Well, begin tomorrow morning let's go with
3 9:45 because what the lawyers and I are going to do this
4 afternoon is continue to move forward with some matters
5 that we can address, if there are any. And we'll also be
6 back before 9:45 tomorrow morning to make sure that we
7 are able to start on time without inconveniencing you
8 again. Do not discuss the case. Enjoy your evening.
9 And I'll see you tomorrow morning at 9:45.

10 (Jury retires for the day at 4:43 p.m.)

11 THE COURT: All right. Ms. Barr, Mr. Barr, what I'd
12 like to do is we'll take a break for about five minutes
13 and then we'll come back in, we'll begin the proffer of
14 Mr. *VICTIM*'s testimony. Mr. Barr is that suitable to the
15 Defendant? I assume that will take us up to probably
16 5:30.

17 MS. BARR: You're probably right, Judge.

18 THE COURT: Mr. Barr, any objection to that?

19 MR. BARR: No, sir, Judge.

20 THE COURT: All right. Take about five minutes, and
21 I'll be right back.

22 (Off the record).

23 THE COURT: All right, Mr. Barr has raised a Motion
24 in Limine that I think would probably be a good idea to
25 address it at this point. And that is, he's moved to --

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1 he's moved me to not allow evidence of the facts and
2 circumstances that led to the conviction in General
3 Sessions Court in Georgetown County involving, again, I
4 don't know the facts because I've not heard the
5 testimony, but what I understand is the Defendant entered
6 a plea of guilty to criminal sexual conduct, second
7 degree, CSC with a minor, second degree in Georgetown
8 County last year. And that plea was centered around
9 circumstances that occurred in the year 1999, I believe
10 some nine months after the trip that is the subject of
11 this trial. Is that correct, Ms. Barr?

12 MS. BARR: That is correct, Your Honor.

13 THE COURT: All right. And what I want to do is hear
14 testimony from the Defendant about this particular case
15 that we're here to try and the facts that were the
16 subject of the Georgetown County conviction and then hear
17 the arguments of the attorneys so I can make a
18 determination as to whether or not the evidence of the
19 Georgetown County scenario will come in in the State
20 versus Lyle or otherwise. And the attorneys and I have,
21 of course, spent a fair amount of time on this and
22 everyone knows that it's a general proposition of law
23 than evidence of a prior bad act or another bad act,
24 whether or not it's the subject of a conviction or not,
25 is not admissible simply to show the guilt of a Defendant

HEARING

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1 in these proceedings. However, there are some exceptions
2 for State versus Lyle and we know of those as common
3 scheme and plan. Ms. Barr, you can call VICTIM to
4 the stand and we can begin to proffer testimony.

5 MS. BARR: Your Honor, at this time, we call

6 VICTIM.

7 (Witness is sworn to tell the truth).

8 PROFFER TESTIMONY OF VICTIM - EXAM BY MS. BARR:

9 Q. VICTIM, let me get you to state your full name.

10 A. VICTIM

11 Q. And what's your birth date?

12 A. My birthday is July 27th, 1987.

13 Q. Okay. And you're currently 19 years old?

14 A. Yes, ma'am.

15 Q. And you know the Defendant Robert Troy Taylor; is
16 that correct?

17 A. Yes, ma'am.

18 Q. And you know -- knew him I should say in the
19 capacity of him being the pastor at the church you
20 attended with your family?

21 A. Yes, ma'am.

22 Q. How ---

23 THE COURT: Put the microphone in front of his mouth
24 so I can hear him a little bit better. Just a tad.

25 That's good. All right, sir.

HEARING

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- 1 Q. How long have you known the Defendant?
- 2 A. Seven, eight years.
- 3 Q. Now, sir, back on November the 6th of 1998, you
- 4 attended an overnight camping trip with the Defendant?
- 5 A. Yes, ma'am.
- 6 Q. Were there other children who attend as well?
- 7 A. Yes, ma'am.
- 8 Q. And you were 11 years old at the time?
- 9 A. Yes, ma'am.
- 10 Q. On that occasion, you indicated or alleged to the
- 11 police that the Defendant sexually assaulted you at that
- 12 time; is that right?
- 13 A. Yes, ma'am.
- 14 Q. Can you tell me specifically -- I mean, details of
- 15 what he did to you on that occasion?
- 16 A. You want me to explain how -- the entire night when
- 17 we left and everything or just ---
- 18 Q. Just talk about at night I guess when you all were
- 19 put to bed to go to sleep.
- 20 A. We went to sleep like ten o'clock. We all slept
- 21 under a big tarp. Troy had his own tent. And it was
- 22 really cold. And all the gear and supplies and
- 23 everything were in his tent, and we all slept up
- 24 underneath the big tent. He -- he was under there, and I
- 25 was asleep. And I was awoken by him. And he put his

THIRD JUDICIAL CIRCUIT

(803) 436-2150;

HEARING

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1 MR. BARR: Your Honor, I thought I had another copy
2 of that statement.

3 THE COURT: You're handing the witness what, Mr.
4 Barr?

5 MR. BARR: Identification Defense 1.

6 THE COURT: Okay.

7 (Defendant's Exhibit Number One for I.D. was marked)

8 Q. I'm going to show you now what's been marked for
9 identification purposes as Defense Exhibit Number 1 and
10 ask you to take a look at that.

11 A. Okay.

12 Q. And is that a statement that you gave law
13 enforcement?

14 A. Yes, sir. It is.

15 Q. And what's the date on that statement?

16 A. June 1st, 2005.

17 Q. And does that -- now, don't you say in that
18 statement that Charles asked you to go along?

19 A. Yes, sir. I did.

20 Q. Now, to make sure that I'm clear, Charles was the
21 one that asked you to go along on the trip supposedly,
22 the camping trip? Isn't that what you say in here?

23 A. Yeah.

24 Q. Isn't it fair to say that you went on the trip
25 because Charles asked you?

HEARING

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1 A. Specifically, no. But I did go on the trip because
2 Charles was going, yes.

3 Q. When you say he asked you and in response to him
4 asking you, you decided to go, didn't you say that?

5 A. Yes.

6 Q. Okay. Now, isn't it also true that in this same
7 statement that you gave on the 25th, you did not say one
8 word in that statement to the effect that you had sexual
9 intercourse with Mr. Taylor?

10 THE COURT: You say the 25th. I thought it was June
11 1 ---

12 MR. BARR: June 1. I'm sorry.

13 A. Yes, this was the first statement that I gave.

14 Q. Isn't it true ---

15 A. Yes, it is.

16 Q. --- that you didn't say one word about having sexual
17 intercourse with ---

18 A. Yes, sir. In that statement it is.

19 Q. That is your statement, is it?

20 A. That's is.

21 Q. And it's the truth, isn't it?

22 A. Yes, sir. In that statement. I gave two
23 statements.

24 Q. Now, you indicated that -- in 1999, in Georgetown
25 County when you claim that you were forced to have sexual

HEARING

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- 1 intercourse with Troy, I believe you said that you'd been
2 to the beach; is that correct?
- 3 A. Yes, sir.
- 4 Q. And how far is Troy's house from the beach? How far
5 was it?
- 6 A. Maybe ten minutes.
- 7 Q. And according to you, the sexual encounter occurred
8 in the shower in his bathroom?
- 9 A. Yes, sir.
- 10 Q. Now, how did you get into the Charles's house?
- 11 A. Sir?
- 12 Q. How did you get into Charles's house?
- 13 A. Charles's house?
- 14 Q. I mean, how did you get into Troy's house?
- 15 A. Oh, they had -- one time we used to have showers at
16 the church. And by -- all the showers taken up and Troy
17 was going back to his house. And he asked if, since we
18 didn't have any showers, if we wanted to go back there to
19 take a shower. And we said yes.
- 20 Q. That's in 1999?
- 21 A. Yes, sir. It is.
- 22 Q. Now, how many other people went with you?
- 23 A. Charles.
- 24 Q. Just Charles?
- 25 A. Just Charles.

HEARING

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- 1 Q. And where was Charles -- Charles went with you in
2 1999 to Troy's house?
- 3 A. Uh-huh.
- 4 Q. Who else went with you?
- 5 A. Troy.
- 6 Q. And anybody else?
- 7 A. They didn't basically go with us to the house, no.
8 His wife was already home.
- 9 Q. So then, how many people, young people -- how many
10 people were at the beach?
- 11 A. About ten or 15.
- 12 Q. And out of the ten or 15 young people that were at
13 the beach, the only two people that went to Charles's
14 house or went to Troy's house was you and Charles?
- 15 A. Yes.
- 16 Q. Now, whose idea was it to go to Charles's house? I
17 mean, to go to Troy's house?
- 18 A. Troy.
- 19 Q. And what did Troy tell you that he was taking you to
20 his house for?
- 21 A. Take a shower.
- 22 Q. Did the thought occur to you that Troy would abuse
23 you at that time?
- 24 A. No, sir.
- 25 Q. Well, that was in 1999, right?

HEARING

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1 A. Yes, sir.

2 Q. And you say, in 1998, he'd already had sexual
3 intercourse with you?

4 A. Yes, sir.

5 Q. And you're aware of that, weren't you?

6 A. Yes.

7 Q. And notwithstanding that, you went back to the house
8 with him in 1999?

9 A. I was awake this time. You know, I had somebody
10 with me. His wife was home. You know, I didn't really
11 think that would happen with other people there that
12 could watch.

13 Q. So there were other people there?

14 A. Yeah, his wife and Charles.

15 Q. Now, in 1998, you said he put his hands over your
16 mouth. Now, I notice you didn't say anything about him
17 putting his hands over your mouth in '99. Did it occur
18 to you, in as much as you said there were other people at
19 the house, to say to somebody or to just yell out and say
20 Charles is having sex -- or Troy's having sex with me?

21 A. I was in the back bathroom. His wife was in the
22 kitchen, and Charles was in the other bathroom. Who am I
23 going to yell for? I mean, I was 12 years old. I was
24 less than a hundred pounds. That's kind of small, you
25 know. Ain't really too much no one there can do, so.

HEARING

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1 Q. When you came out of the bathroom, where was the
2 other members of Troy's family?

3 A. Allyson was in the kitchen. Charles was just coming
4 out of the bathroom.

5 Q. Out of another bathroom.

6 A. Yeah, a guest bathroom.

7 Q. Did you say anything to Allyson about what you claim
8 happened in the shower?

9 A. No, sir. I didn't.

10 Q. Is it your testimony, young man -- I notice you
11 didn't say anything about laying down, getting on your
12 knees, or anything. I'm assuming that this sexual
13 encounter occurred while you were standing up?

14 A. Just about all of it, yes, sir.

15 Q. Just about all of it. You were standing up and
16 somehow Troy managed to get his penis in your anal
17 cavity? Pardon?

18 A. I didn't say anything.

19 Q. You didn't what now?

20 A. So what are you asking me ---

21 Q. I'm asking you how did he manage to get his penis in
22 your anal cavity standing up.

23 A. Well, we sat -- yeah, I got on my knees, and he was
24 down, too. But, you know, we ---

25 Q. Oh. Got on your knees. He was down, too. Why'd

HEARING

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- 1 you get on your knees?
- 2 A. (No response).
- 3 Q. Oh, he told you to get on your knees? Now, when he
- 4 told you to get on your knees, what'd you think he was
- 5 about to do?
- 6 A. I had no idea.
- 7 Q. Well, you know he wasn't getting ready to ask you to
- 8 pray, was he?
- 9 A. No, sir.
- 10 Q. Did you ask him why are you asking me to get on my
- 11 knees?
- 12 A. Yeah, I just -- he said, just do it.
- 13 Q. So you got on your knees in the shower? Sir?
- 14 A. Yes, sir.
- 15 Q. And now you're telling us today Troy got on his
- 16 knees?
- 17 A. I wouldn't say his knees, but he sat down. Yes,
- 18 sir.
- 19 Q. He sat down?
- 20 A. Yes, sir.
- 21 Q. And where was his hands at -- when he sat down?
- 22 A. Bracing himself as he sat down.
- 23 Q. Bracing himself? Was his hands touching you at all?
- 24 A. After he sat down, yeah.
- 25 Q. How were they touching you?

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1 A. Fondling me.

2 Q. Now, he was fondling you and putting his penis in
3 your anal cavity all at one time?

4 A. Not all at once, no.

5 Q. Well, tell me how he was fondling you.

6 A. Well, you asked me how he was when he sat down.

7 Q. Well, tell me how he was putting his anal -- his
8 penis in your anal cavity and fondling you at the same
9 time.

10 A. When he was fondling me, I was still on my knees.

11 Q. Fondling what?

12 A. My penis and my rectum.

13 Q. Now, you don't deny that this is the first time that
14 you ever -- or you've never, you've never given a report
15 to the police indicating that -- that Troy at any time
16 told you to get on your knees, did you?

17 A. Yeah, written there.

18 Q. Written in what?

19 A. That ---

20 Q. In your statement?

21 A. Yes, sir.

22 Q. Show it to me.

23 A. It's not going to be in this one, sir.

24 Q. Is it in the other statement?

25 A. Yeah, it should be. Yes, sir.

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1 Q. Now, is that the one that you gave on November 23rd
2 of 2005?

3 A. I don't remember the date. No, sir. I don't.

4 Q. Defense Exhibit, for identification purpose, Number
5 2.

6 THE COURT: This statement dated November '05, Mr.
7 Barr, is that what you indicated?

8 MR. BARR: I think it's November 1st.

9 THE COURT: All right.
10 (Defendant's Exhibit Number 2 for I.d. was marked)

11 A. It's not in that one.

12 Q. Pardon me?

13 A. It's not in that one either.

14 Q. It's not in that one either, is it?

15 A. The incident you're talking about is not in either
16 one of these.

17 Q. November 23rd?

18 A. That one is still Williamsburg County, and we're
19 talking about Georgetown County.

20 Q. So then you do agree that you never gave any
21 statements to -- to police where you told them that
22 Charles -- that Troy told you to get on your knees?

23 A. I did. I've given statements. I've done a voice
24 recording of Georgetown County in Georgetown County. I'm
25 just -- just simply saying that you don't have the

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1 Georgetown County statement. Or the Georgetown County
2 incident.

3 Q. So it's your testimony today that at some point you
4 told the police officer that Troy told you to get on your
5 knees?

6 A. Yes, sir.

7 Q. Was the water running in the shower?

8 A. Yes, sir. It was.

9 Q. And when you got out of the shower, what'd you do?

10 A. I dried off and put my clothes on.

11 Q. Thank you. I have nothing further.

12 THE COURT: Re-direct, Ms. Barr.

13 RE-DIRECT EXAMINATION BY MS. BARR:

14 Q. *VICTIM* you indicated that you gave a couple of
15 statement to Georgetown County, is that right?

16 A. Yes.

17 Q. Was there an initial thought by the agency there
18 that the incident happened in November of 1998 happened
19 in Georgetown County as opposed to Williamsburg County;
20 was there some confusion over that at some point?

21 A. Say that again, I'm sorry.

22 Q. Was there some confusion by the Georgetown County
23 Sheriff's Office or the police department over where this
24 incident happened of the camping trip, whether it
25 happened in Georgetown or Williamsburg County?

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1 A. Yes, ma'am, there was.

2 Q. It was a camping site in Andrews; is that right?

3 A. Yes, ma'am.

4 Q. And Andrews falls -- part of it falls in
5 Williamsburg County, and part falls in Georgetown County?

6 A. Yes, ma'am.

7 Q. Correct? All right. So at some point in time, you
8 gave statements to Georgetown County about this incident
9 because you may have thought it happened there; is that -
10 - is that right?

11 A. Yes, ma'am.

12 Q. And you later learned that it actually occurred in
13 Williamsburg County?

14 A. Yes, ma'am.

15 Q. And in addition to handwritten statements, you gave
16 oral statements and taped statements to Georgetown County
17 Sheriff's Office?

18 A. Yes, ma'am.

19 Q. And in certain statements you were more detailed
20 than in others; would that be fair to say?

21 A. Yes, ma'am.

22 Q. Thank you.

23 RE-CROSS EXAMINATION BY MR. BARR:

24 Q. You said you later learned that it occurred in
25 Georgetown County?

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1 A. No, sir. I later learned ---

2 Q. Or in Williamsburg County?

3 A. Yes, sir.

4 Q. And where in Williamsburg County did it occur?

5 THE COURT: Are you talking about the incident that's
6 being tried?

7 MR. BARR: I -- I guess that's -- that's the '78
8 incident, yes.

9 MS. WINFIELD, COURT REPORTER: '98.

10 MR. BARR: '98, yes, sir.

11 THE COURT: There's some question?

12 MR. BARR: Yes, sir.

13 A. I don't know the exact name of the road. I believe
14 it's 17, 521.

15 Q. Now, my understanding is that you indicated that you
16 went down in the woods nine miles, nine and a half miles.

17 A. No. A mile I believe is what I said. We weren't
18 that far back in there.

19 Q. You didn't say that you went down in the woods nine
20 miles ---

21 MS. BARR: Objection. That falls outside the scope
22 of re-cross.

23 THE COURT: I'll allow it. Go ahead.

24 A. No, sir. Not to the best of my knowledge. We
25 weren't that far in the woods.

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1 THE COURT: Don't get too far from what the
2 purpose of the proffer is. Mr. Barr, can you explain the
3 relevance of the nine miles versus one mile, what
4 bearing that has on the evidentiary question at hand?

5 MR. BARR: Well, Judge, well, and this is just in
6 response to the statement he said that he -- he was in
7 Williamsburg County. And my contention is he doesn't
8 know where he was. Now ---

9 THE COURT: That's a venue question, right?

10 MR. BARR: Pardon?

11 MS. BARR: Yes, sir.

12 THE COURT: I would assume you need the Sergeant to
13 clarify that? I don't know.

14 MR. BARR: Yeah.

15 THE COURT: Let's stick to the analysis of Lyle that
16 I asked the proffer to be directed toward.

17 MR. BARR: Thank you, Judge.

18 Q. I'm going to show you again your statement dated
19 June 1. And tell us if you would, please, how far you
20 said you traveled down in the woods.

21 A. No, sir. What this says is about a mile, sir. It
22 says about a mile.

23 Q. So you traveled about a mile?

24 A. About a mile, yes, sir.

25 Q. And when you stopped traveling, do you know where

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1. you were?

2. A. I was right next to the Black River, sir.

3. Q. And do you know whether you were in Georgetown or
4. Williamsburg County?

5. MS. BARR: Objection.

6. A. I didn't know at the time, no, sir.

7. THE COURT: I'll overrule the objection keeping in
8. mind that we're in a proffer. Again, let's keep focused
9. on the Lyle issue, because this is not a deposition.

10. Q. So you didn't know what county you were in?

11. A. Not at the time, no, sir, I didn't.

12. MR. BARR: I have nothing further.

13. THE COURT: All right. Anything else, Ms. Barr?

14. MS. BARR: Nothing further.

15. THE COURT: All right. Does the State have anything
16. additional to proffer on the issue on whether or not the
17. Georgetown County resulted in a conviction would be
18. admissible as part of the common scheme plan or under any
19. other exception under State versus Lyle?

20. MS. BARR: Your Honor, I believe we stipulated that
21. the second incident occurred in 1999 plus the fact make
22. sure I put that on the record. If I need to introduce a
23. copy of the sentencing sheet on that to, stipulated to
24. that.

25. THE COURT: Mr. Barr, do you have any response to

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1 that statement by Ms. Barr?

2 MR. BARR: Judge, I apologize ---

3 THE COURT: Is there a stipulation from the Defense
4 that the Georgetown County charge resulted in the
5 conviction by virtue of a guilty plea, at least for the
6 purposes of my analysis of the facts under Lyle?

7 MR. BARR: It did occur.

8 THE COURT: I assume that his going --- and that's
9 not going to come into evidence, is it, Ms. Barr?

10 MS. BARR: I wouldn't imagine, Judge.

11 THE COURT: All right. Anything else Ms. Barr?

12 MS. BARR: No, sir, Your Honor.

13 THE COURT: All right. I'm glad to hear from you
14 first, Mr. Barr, since it's your motion.

15 MR. BARR: Yes, sir. Judge ---

16 THE COURT: Well, let me back up. Tell me why it's
17 admissible, Ms. Barr.

18 MS. BARR: Your Honor, it's admissible under Rule 404
19 (d) South Carolina Rules of Evidence which allow the
20 admission of evidence of other crimes, wrongs, or acts
21 that establish motive, identity, the existence of a
22 common scheme or plan or intent. Judge, we would submit
23 that under the authority of Lyle case as well as State v.
24 Wavering, in addition to the Statute that the admission
25 of evidence subsequent assault falls within the exception

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1 of the common scheme or plan. Judge, we would show that,
2 based on the testimony in this case, that no -- that in
3 both instances, it was the same victim; that the
4 encounter resulted as a result of pastor-church member
5 relationship; that in each particular assault, the child
6 was away from his parents on a church-sponsored event;
7 that in each particular assault it was a group type of
8 event and occurred apparently in another county from
9 where the child lived; each of these type -- each of
10 these assaults, the method and manner of assault occurred
11 the same. The child was instructed by the Defendant to
12 fondle him. The Defendant fondled the child in the same
13 areas in the exact same instances. In both those cases,
14 began fondling him in his genitalia and on his rectum.
15 That after the fondling took place, of course it
16 graduated to an actual sexual battery that included anal
17 intercourse on both occasions. In both of those
18 occasions, the Defendant instructed this child to not
19 tell anyone. That it was a secret, and he was not
20 supposed to tell anyone. Judge, also on both occasions,
21 it occurred when the child was a pre-teen and was 11 and
22 12 years old. And it happened, both instances, within a
23 year of each other. And so we would submit that there's
24 overwhelming evidence and given the fact it's not just
25 prior bad act, there's clear and convincing evidence that

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1 the crime that occurred in Georgetown County resulted in
2 a conviction. And so we would submit that the Lyle Rule
3 requires that the crimes be substantially similar, which
4 they are. They require that there must be clear and
5 convincing evidence of the crimes, and I would submit
6 that there is ---

7 THE COURT: That's for a non-conviction ---

8 MS. BARR: Unindicted.

9 THE COURT: That's satisfied here.

10 MS. BARR: And, Judge, this -- and you're absolutely
11 right. And this is a situation that's certain similar to
12 the set of facts that occurred in the State versus case.
13 And in that case, the Court of Appeals allowed or
14 sustained the admission of the admission into evidence of
15 the prior crimes. And we would submit to the Court that
16 this is no different than those set of circumstances. It
17 is proper that it be brought forth to the jury for its
18 consideration.

19 THE COURT: Mr. Barr?

20 MR. BARR: We disagree with the -- with the
21 conclusion that's been reached by the prosecutor. I
22 think if we look at both these situations assuming that
23 the -- if you look at 19 -- first, not 1978 situation,
24 1999, we see that -- that in terms of the way these
25 things were initiating, which is one of the most

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1 important things, they both came about through different
2 means. That is, in the -- I think the witness admitted
3 that, and of course in his statement indicates that he
4 was asked to go along on this trip in 1998 by -- by Mr.
5 H -- Mr. H . He even wrote it in his
6 statement. In addition to having been asked to go along,
7 as far as the particulars as to how the alleged assault
8 occurred, the Defendant admitted under cross examination
9 after he was impeached. That nowhere in his statement,
10 that is the statement that he gave the factual
11 allegation, did he claim that -- that Mr. Taylor had anal
12 sexual intercourse with him. So in terms of the common
13 scheme or plan and motive under the Lyle exception,
14 Judge, we would submit to the Court that -- that there is
15 -- as far as the factual similarities, the factual
16 similarities, they're just not there. Now, looking at
17 the issue of whether or not this ultimately led to a
18 conviction, well, it did because he pled guilty. I think
19 under the rules what we're required to do is look at the
20 facts to determine whether or not this -- these
21 situations meet the Lyle exception. And in looking at
22 the facts, clearly, we don't have the appropriate
23 components for a Lyle exception. And, Judge, even if --
24 assuming for the sake of argument that the State has --
25 has at least some -- some factual scenario that would

1 check a Lyle analysis, Your Honor, we still have Rule
2 403. And -- and 403 still applies on whether or not
3 you're talking about impeachment for other crimes or
4 whether or not you're still talking about using a Lyle
5 analysis. We would submit that the prejudice that the --
6 the prejudice from admitting these confusing statements
7 to the jury would -- would present a situation where
8 there would be substantially outweigh any probative value
9 of this information. And clearly, when we look at the
10 context that's being present for the jury to as nothing
11 else other than draw a conclusion that the Defendant
12 acted in this situation in performing how he would have
13 acted in another situation, Judge. And we would submit
14 that that is improper. This jury's not -- this jury's
15 not going to be able to separate the two things. And --
16 and for that reason, we would ask that the Court not
17 allow this evidence to come in. Not allow the evidence
18 to come in. We -- we're looking for a fair trial, Judge.
19 You know, I don't -- I don't mind defending on the facts
20 of the case the Defendant is charged with, but to have
21 them unduly this case with complicated issues that are
22 designed for no other reason other than to prejudice the
23 jury, Your Honor, we would simply ask the Court -- if for
24 no other reason alone, under 403, not allow this Lyle --
25 Lyle evidence to be used.

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1 THE COURT: All right. Any response to that Ms. Barr?
2 I'll let you have the last word. Ms. Barr?

3 MS. BARR: Your Honor, the only thing that I would
4 say in response is that the arguments that counsel made
5 is the same arguments that Defense lawyers made at the
6 trial of State versus Edwards, that the evidence sought
7 to be admitted was more prejudicial than probative and
8 didn't fall under the Lyle exception. Judge, the State v
9 Edwards case is a 2007 case. It's pretty recent, so we
10 would submit that, just for the sake, allow the evidence
11 in and the Court of Appeals affirmed it in this case.
12 Your Honor, you know, it's a situation where Mr. Barr is
13 telling you that it shouldn't come in because the victim
14 didn't say in this particular statement all of the
15 particulars that he was saying on the stand. Judge, it's
16 a handwritten statement by this child. And I'm quite
17 sure he didn't tell every specific detail. I think that
18 certainly goes to the weight of the evidence. I think
19 Mr. Barr, in the trial of the case, to cross examine the
20 victim about why he did or didn't put something in his
21 statement evidence testified to.

22 THE COURT: All right. Ms. Barr.

23 MR. BARR: This statement is not a child's statement.
24 Both these statements were taken in 2005. They're not,
25 you know, the statement is not a child's statement. And

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1 as far as the factual allegations, I would assume, Judge,
2 that command the factual scenario certainly ---

3 THE COURT: You talking about the Georgetown
4 incident?

5 MR. BARR: Both of them. The statements concerning
6 the or 2005 statements. But the point is, Judge, you as a
7 trial judge do have discretion. And of course in the
8 exercise of that discretion you -- we simply submit that
9 this factual situation -- and you've heard what the facts
10 are -- commands that -- that while the prosecution may
11 have suggested that -- that it is appropriate to at least
12 analyze the issue under Lyle, clearly there is just
13 simply no that they are actually connect the two
14 incidents to the extent that -- that's required under
15 Lyle. And as indicated earlier notwithstanding knowing
16 at this point what the testimony will be as it relates to
17 the two incidents, Your Honor, clearly you can see there
18 will be substantial prejudice. I think the prosecution
19 has -- they've got enough alone with what they claim has
20 taken place in 1970 -- 1998 is not enough along to
21 proceed, to prosecute that's what we've chosen to do.
22 But to allow them to go back and get 1999 incident simply
23 for no other reason other than to confuse the jury, to
24 prejudice the jury against the Defendant. Your Honor, we
25 would submit that in the court's discretion to not allow

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1 this evidence to come in under any Lyle exception.

2 THE COURT: All right. Well, both of you have
3 summarized the law and both of you especially Mr. Barr
4 has accurately stated it's within my discretion. So
5 everybody telling everybody what the law is is the easy
6 part. The hard part is applying the law to the facts of
7 the particular case, which is what I'll have to do. And
8 I certainly -- well, I've got the State versus Mathis,
9 State versus Edwards, State versus Whitener, State versus
10 whoever else that involves this particular issue. Going
11 back a bit, the State versus Mathis case does state that
12 if not the subject of the conviction, the other bad act
13 must be established by clear and convincing evidence.
14 That's why I kept on asking the question. I know he pled
15 to CSC with a minor, second degree. I don't know the
16 specifics of the facts he pled to. That's what I don't
17 know. I heard Mr. *VICTIM* today testify that it was anal
18 intercourse in both instances. I have no clue what the
19 facts or recitation was by the solicitor at the
20 Georgetown plea. I don't know. It seems to me that the
21 clear and convincing question has been established
22 because Mr. Taylor pled guilty to that. So the question
23 whether or not the Georgetown incident occurred is not
24 within my review, because he's admitted that it occurred.
25 Seems to me. The question then becomes, as Mr. Barr

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1 correctly stated, whether or not the two scenarios were
2 similar enough under case law and under Rule 404 (b) to
3 survive an analysis of common scheme or plan. And then,
4 as Mr. Barr indicated, whether or not, even if it
5 survives that analysis, whether or not it's still whether
6 the prejudicial impact outweighs the probative value.
7 The case law clearly states that the common scheme or
8 plan exception is generally applied in cases involving
9 sexual crimes where evidence of acts prior to and
10 subsequent to the act charged in the indictment is held
11 admissible as tending to show continued illicit
12 intercourse between the same parties. And again that's
13 a quote from State versus Mathis that talks about State
14 versus Whitener. If you want that cite, it's 89 SC 2nd,
15 701. That's a 1955 case.

16 And then it -- the Court of Appeals analyzed State
17 versus Weaverling, which Ms. Barr referenced, as follows,
18 it says, we interpret State versus Weaverling to suggest
19 a common scheme or plan evidence in criminal sexual
20 conduct cases will be admitted on a generalized basis
21 only where there's a pattern of continuous illicit
22 conduct. Sex crimes may be unique in this respect
23 because they commonly involve the same victims engaged in
24 repeated incidents occurring under very similar
25 circumstances.

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1 Now, whether or not incident in '98, whether or not
2 incident in '99 is sufficient to constitute a pattern, as
3 that word is contemplating by these cases that's what I'm
4 going to have to review. And I'll certainly let you know
5 what my ruling is in the morning. I agree that both
6 sides' philosophical arguments and, of course, it will be
7 up to me to apply your arguments in the facts of these
8 two cases through Rule 404, State versus Lyle, and
9 backwards in time, as Mr. Barr correctly argued, but I
10 have to analyze it all under Rule 403. All right. I'll
11 be back here probably between nine and 9:15, have my
12 ruling by then. And we'll -- if the lawyers could be
13 back at 9:30, that would be a big help. All right?
14 Anything else, Ms. Barr or Mr. Barr in light of what I've
15 said.

16 MS. BARR: Nothing else from the State, Your Honor.

17 MR. BARR: Nothing from the defense, Your Honor.

18 THE COURT: Thank you very much.

19 (Adjourn for the day).

20 (Wednesday, July 11, 2007)

21 THE COURT: Ms. Barr, is the State ready to proceed?

22 MS. BARR: The State's ready, Your Honor.

23 THE COURT: Is, Mr. Barr, the Defense ready?

24 MR. BARR: Yes, sir, Judge.

25 THE COURT: All right, Ms. Barr, from our discussions

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1 yesterday or prior to the time we went off the record
2 yesterday, you indicated that your next witness would be
3 Mr. *VICTIM* ?

4 MS. BARR: That's correct, Your Honor.

5 THE COURT: All right. And then we took a proffer of
6 evidence from Mr. *VICTIM* so that I could examine the
7 issues raised by Mr. Barr in his Motion in Limine to
8 exclude evidence concerning the factual scenario that was
9 the subject of the Georgetown County conviction.

10 MS. BARR: That's right.

11 THE COURT: All right. And I have considered the
12 testimony. And obviously, especially for the attorneys,
13 they understand that the extremely difficult challenge
14 this presents to anyone analyzing this evidence under the
15 rules that we have, specifically Rule 404, State versus
16 Lyle and all the cases that have come after it and also
17 turning back to Rule 403. And not to be -- or actually
18 to be repetitive somewhat, Rule 404(b) states that
19 evidence of other crimes -- and it doesn't say prior, it
20 says other -- other crimes, wrongs, or acts are not
21 admissible to prove the character of a person in order to
22 show action and conformity therewith. However, as we
23 discussed yesterday, it can be admissible to show motive,
24 identity, and the existence of a common scheme or plan
25 from the absence of a mistake or accident or intent.

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1 Now, the Lyle case, which was a 1923 case, states
2 that the rationale behind the general rule of
3 inadmissability is grounded upon the rule that evidence
4 from other distinct crimes committed by the accused may
5 not be admitted merely to raise an inference of guilt in
6 the case involving the newer charge that has not yet been
7 tried. And the case specifically says to prove that the
8 Defendant has been guilty of another crime equally
9 heinous prompts to a ready acceptance of and belief in
10 the State's theory that the Defendant is therefore guilty
11 of the crime charged.

12 As the case law has progressed throughout the years
13 and as recognized by Lyle, of course, evidence of the
14 other bad act may be admitted to prove those things that
15 I mentioned earlier, and specifically germane to this
16 case is the common scheme or plan exception. Now, there
17 are numerous cases involving non-sexual crimes that have
18 addressed the Lyle issue. State versus Gore says a close
19 degree of similarity between the crime charged and the
20 other bad acts by itself does not satisfy Lyle. And it
21 says, indeed the mere presence of similarity only
22 enhances the potential for prejudice. State versus
23 Hough, H-O-U-G-H, says a common scheme or plan concerns
24 more than the commissions of two similar crimes. Some
25 connection between the crimes is necessary. And State

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1 versus Harper says general similarity is not enough. And
2 again, another case that was not a sexual crime case,
3 State versus Stokes, provides that the Lyle exception
4 requires more than the mere commission of two similar
5 crimes by the same person. There must, again, be some
6 connection between the two. And then we get to cases
7 involving sexual crimes.

8 Some may think that the Appellate Courts in our
9 state have used a more relaxed approach in involving
10 evidence of other crimes in cases involving sexual
11 crimes. I'm not going to comment on whether that is the
12 case or not, but there are some sexual crime cases that
13 are worthy of consideration. And first of all, as we
14 discussed yesterday, there's the case of State versus
15 Mathis, which is a Court of Appeals case from 2004. And
16 it provides that citations to other cases, that the
17 common scheme or plan exception is generally applied to
18 cases involving sexual crimes where evidence of acts
19 prior to and subsequent to the act charge is -- is
20 present. And it's held admissible as tending to show
21 continued illicit intercourse between the same parties.
22 And that case, of course, as we indicated yesterday,
23 cites State versus Weaverling, which in turn quotes a
24 1955 case, State versus Whitener. And in State versus
25 Mathis, the Court indicated that it interpreted State

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1 versus Weaverling that a common scheme or plan evidence
2 or a common scheme or planned evidence in criminal sexual
3 conduct cases will be admitted on a generalized basis
4 only where there's a pattern of continuous illicit
5 conduct. So everybody sees that the crucial issue is
6 determination of a pattern of continuous illicit conduct.

7 Which the case further states that sex crimes may be
8 unique in this respect because they commonly involve the
9 same victim engaged in repeated incidents occurring under
10 very similar circumstances. And as the attorneys argued
11 yesterday, the Defense and the State have different takes
12 on whether or not the scenario with which we are faced
13 falls under that general description.

14 The Mathis case further stated that the reason for
15 general admissibility of such evidence under these
16 circumstances is self evident. Where there is a pattern
17 of continuous conduct shown, that pattern clearly
18 supports the inference of the existence of a common
19 scheme or plan, thus bolstering the probability that the
20 charge that occurred in a similar fashion. There's
21 another Court of Appeals case called State versus Adams
22 that conducts a Rule 404 analysis, specifically of course
23 it comes from State versus Lyle. And it repeats the same
24 general propositions that I just mentioned.

25 And that turns us back to the facts at hand. The

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1 Defendant in 1999 or in, excuse me, in 2006, had entered
2 a plea of guilty to criminal sexual conduct with a minor
3 involving Mr. *VICTIM* here. That occurred, according to
4 the testimony of Mr. *VICTIM*, in Georgetown County after a
5 -- let me say for the record of course, it bears out that
6 the Defendant was a pastor at Low Country Baptist Church.
7 I believe I got the church name right. And that Mr.
8 *VICTIM* testified that he was part of a youth group; was
9 12 years old at the time of the Georgetown incident. And
10 the youth had gone on an outing to Huntington Beach State
11 Park. Had swam in the ocean. And when the youth group
12 returned to church, the showers at some point became
13 occupied and Mr. Taylor suggested to Mr. *VICTIM*, who was
14 then again 12, that perhaps he would want to come to his
15 house and take a shower. And Mr. *VICTIM* and another
16 young man named, last name of H went and the
17 sexual assault that Mr. Taylor has entered a plea to
18 occurred in the shower in his home.

19 The facts complained of in this particular case
20 involved a youth group outing to a campsite in
21 Williamsburg County where at some point in the night,
22 according to the allegations in the Indictment and from
23 Mr. *VICTIM*'s testimony -- which is more pertinent, at
24 least at this point -- Mr. Taylor allegedly entered the
25 area where Mr. *VICTIM* was sleeping, put his hand over his

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1 mouth. And I believe the testimony was that he picked
2 him up and took him elsewhere and sexual intercourse
3 occurred. In both instances, it's alleged that the
4 intercourse was anal and was accompanied prior thereto to
5 some touching of each other or by Mr. VICTIM of Mr.
6 Taylor and by Mr. Taylor of Mr. VICTIM, rubbing of the
7 rectum and so forth. And after both instances, there was
8 a -- an admonition by Mr. Taylor not to tell others about
9 the incident that had occurred.

10 The two incidents occurred within a space of I
11 believe nine to ten months. And both occurred when the
12 Defendant separated the victim in some manner from the
13 rest of the group. And they both occurred of course away
14 from the minor's home and away from -- actually away from
15 the church property.

16 Now, the difference between the two as I can see is
17 that one involved a situation of alleged kidnaping. In
18 other words, there was some degree of covertness in Mr.
19 Taylor taking Mr. VICTIM away from where he had been to
20 another point to engage in this act. The other involved
21 a situation of what may be considered enticing him or
22 luring him away consensually under the guise of taking a
23 shower at his house because the church showers were in
24 use.

25 Now, everybody knows what I just said. That's --

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1 that's what the allegations are and the lawyers
2 especially know that that is what the law is. I have
3 concluded at least preliminarily under Rule 404 that the
4 evidence of the other crime, and again the case law and
5 particularly Rule 404 do not talk in terms of prior crime
6 or prior bad acts; it talks in terms of other crimes. I
7 have concluded that the two when considered together do
8 fall within the Lyle exception of a common scheme or
9 plan. And the reason I have concluded that is because I
10 believe that my -- or my interpretation of the case law
11 as applies to this particular case is that the acts
12 complained of do show what State versus Edwards
13 references, and that's the 19, or excuse me, the 2007
14 case, show the same illicit conduct with a victim such as
15 would constitute continued illicit intercourse between
16 the same parties. Then we return to Rule 403 where I
17 have to determine whether or not, even though the
18 evidence is relevant as being within a -- the exception
19 of a common scheme or plan and whether or not, as Rule
20 403 states, evidence may be excluded if it's probative
21 value is substantially outweighed by the danger of unfair
22 prejudice, confusion of the issues, or misleading the
23 jury or by considerations of undue delay, waste of time,
24 or needless presentation of cumulative evidence.

25 Now, Mr. Barr made an excellent argument yesterday

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1 under that very rule. And the argument was compelling.
2 But then again, you look at the cases involving sex
3 crimes, and particularly at least for the moment I'm
4 looking at State versus Mathis, the 2004 Court of Appeals
5 case, and it observed exactly what Mr. Barr argued. Such
6 evidence is inadmissible unless the close similarity of
7 the charged events and the previous acts enhances the
8 probative value of the evidence so as to overrule the
9 prejudicial effect. And that cites State versus
10 McClellan, which is another sexual crime case, I
11 believe.

12 In my view, reading State versus Mathis case and
13 reading Rule 403 and considering the facts of this case
14 as I have in quite detail, and it's not -- it's not an
15 easy task, and my ruling is that under Rule 403, evidence
16 of the other conviction, its probative value of the other
17 conviction is not substantially outweighed by the danger
18 of unfair prejudice. The -- the two analyses converge
19 and almost touch. And as reported in some non-sexual
20 crime cases, the very fact that the crimes are similar is
21 the very reason that you analyze the prejudicial impact
22 so closely. In my view, the probative value of the
23 evidence regarding the other bad act, and that's the
24 Georgetown County act, clearly outweighs the prejudicial
25 effect of admitting the evidence. Mr. Barr's arguments,

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1 I believe, have been preserved as probably -- I practiced
2 law for 20-some odd years before going on the bench and
3 had a lot of cases with Mr. Barr. And one thing about
4 Mr. Barr is he knows the rules of evidence. In this
5 particular case, I think he's done probably the best job
6 that I have ever seen in making the argument that the --
7 that he made yesterday. Of course he would probably say
8 -- he's probably saying right now, well, it must not have
9 been good enough because I've ruled against the Defense.
10 But it's an extremely difficult situation that in my view
11 of all of the evidence, the situation with which we are
12 faced does fall within the Lyle exception of the common
13 scheme and plan. And again, I have ruled that the
14 probative value of the Georgetown conviction or the
15 Georgetown facts is not substantially outweighed by the
16 danger of unfair prejudice, confusion of the issues, or
17 misleading the jury. And with that ruling, I'm sure that
18 Mr. Barr will, at the appropriate time, will preserve it
19 on the record, object to the testimony of Mr. *VICTIM*
20 about the Georgetown incident. And I would certainly not
21 prohibit the Defense from making the objections at the
22 appropriate time.

23 One other thing that may arise during the course of
24 this trial is whether or not Mr. Barr can challenge the
25 Defendant's testimony as to how the or as to what

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1 occurred in the shower in Georgetown County. In my view,
2 unless Mr. Barr has some argument or authority to the
3 contrary, that particular fact situation has been
4 resolved by a criminal conviction, so I don't have to do
5 the analysis of whether or not the Georgetown scenario
6 has been established by clear and convincing evidence.
7 What's the State's position on whether or not Mr. Barr
8 can re-examine or in essence re-try the Georgetown County
9 case, Ms. Barr?

10 MS. BARR: We take the position as barred by res
11 judicata.

12 THE COURT: All right. Mr. Barr?

13 MR. BARR: Court's indulgence, Judge. Judge, I -- I
14 don't think it's -- I don't think it's res judicata. I -
15 - I think under the rule the Defendant ought to be
16 allowed to challenge the victim's recitation of -- of his
17 perception of the facts that constituted the basis for
18 the criminal conviction. But I think the real issue is
19 what happens when -- if the Defendant takes the witness
20 stand ---

21 THE COURT: Yes, sir.

22 MR. BARR: --- and says, well, it didn't happen that
23 way. Is the State then allowed to introduce the
24 conviction and say, well, you were convicted of it and
25 you pled guilty to it, therefore -- and I think that's

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1 the real -- that's -- that's -- that's one of the real
2 issues here. And, again, it's one of the issues that --
3 that's troubling when you get into these situations where
4 you're having to balance this ---

5 THE COURT: I thought about that, too. That's why I
6 asked yesterday, and the question at that time was
7 probably premature. I don't know what the Defendant pled
8 to except for CSC in a general sense. That's all I know.

9 MR. BARR: Yes, sir.

10 THE COURT: I don't know if he fully allocated. I
11 don't know if the judge said tell me what you did. I
12 don't know. I -- so I will examine that at the
13 appropriate time, but at least as far as when the -- Mr.
14 VICTIM s on the witness stand ---

15 MR. BARR: Yes, sir.

16 THE COURT: --- I'll give you some latitude on
17 examining him, but I'm not going to allow -- let's put it
18 this way. If you examine him extensively on the issue of
19 what happened in Georgetown, that may at some point, and
20 I mean, an advanced ruling, but it gives me reason to
21 wonder whether or not you would be opening the door for
22 Ms. Barr to cross examine your client if he takes the
23 stand on the issue of the Georgetown County scenario if
24 my ruling otherwise would've been that it doesn't come in
25 for impeachment purposes.

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1 MR. BARR: Well, and -- and see, that's, again,
2 that's one of the -- the issues here if he should elect
3 to take the stand.

4 THE COURT: That's a dilemma. Probably, at least at
5 this point, Mr. Barr, for you.

6 MR. BARR: Well, Your Honor, then -- then I would
7 most certainly by way of -- of what we're intending --
8 intending to -- to address with the Motion in Limine, I
9 would certainly think that -- that -- and -- and -- and
10 we do have a transcript of the guilty plea proceedings.
11 And as I recall the factual scenario was actually recited
12 by the assistant solicitor. And that is to the extent
13 that they constitute a sub-basis for -- for the -- for
14 Judge Cottingham to determine the plea was appropriate.
15 But I -- I would think that -- that given the nature of
16 the Lyle exception and the limited purposes for which the
17 common scheme -- and I'm sure at the appropriate time, if
18 the case should proceed that far, you will give the jury
19 instructions concerning the limited purposes of the Lyle
20 evidence.

21 THE COURT: Yes, sir.

22 MR. BARR: But -- but I would also think that we
23 would then be in a position, at least through a cross
24 examination, to -- to contradict the victim's
25 presentation of what actually took place as the factual

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1 basis as opposed to whether or not there was in fact a --
2 a guilty plea entered. And ---

3 THE COURT: Well, I'll tell you what we'll do. The
4 direct examination of the -- of Mr. ~~VICTIM~~ can proceed.
5 And then if you think you need to examine something off
6 the record as far as your cross examination is concerned,
7 we can do that during a brief recess ---

8 MR. BARR: All right, sir.

9 THE COURT: --- outside the presence of the jury.

10 MR. BARR: Thank you, Judge.

11 THE COURT: Mr. Barr, I want to make sure that you're
12 satisfied that the record's been preserved on all of your
13 arguments. I think your argument yesterday, frankly, was
14 excellent, because it gave me a great deal of pause.
15 This is not an easy thing to do. And I believe you
16 preserved everything. But if you have anything else you
17 want to put on the record at this point, I'd be glad to
18 let you do that. I will remind you that even though the
19 Appellate cases say that if the Motion in Limine's been
20 ruled upon, which I just did ---

21 MR. BARR: Yes, sir.

22 THE COURT: --- the evidence you seek to exclude is
23 introduced immediately thereafter. And you're not
24 required under the rules to make an objection, but out of
25 an abundance of caution, I suggest that you do so to

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1 preserve it.

2 MR. BARR: Judge, would you -- are you saying that in
3 each instance where ---

4 THE COURT: No, I'm talking about the common scheme
5 and plan ---

6 MR. BARR: Yes, sir.

7 THE COURT: --- clearly of the Georgetown scenario
8 through the mouth of Mr. *VICTIM*.

9 MR. BARR: All right, sir.

10 THE COURT: My suggestion is you go ahead and make
11 your objection and I'll rule on it so it will be
12 preserved.

13 MR. BARR: All right, sir.

14 THE COURT: All right? Ms. Barr, you ready for the
15 jury?

16 MS. BARR: Judge, just one more final note to make
17 sure that I am correctly, so that I can direct Mr. *VICTIM*
18 appropriately. Your Honor has ruled that he is allowed
19 to testify regarding the Georgetown incident, but can't
20 testify about the fact that it resulted in a conviction.
21 Is that ---

22 THE COURT: No, no. I think Mr. Barr, you've agreed
23 to that, it resulted in a conviction?

24 MR. BARR: No, sir. No, no. Absolutely not.

25 THE COURT: Well, how are you going to prove that,

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1 that it resulted in a conviction? I know it did because
2 you -- you -- I thought you admitted that yesterday, Mr.
3 Barr.

4 MR. BARR: Well, Judge, I -- I admitted that it
5 resulted in a conviction. But the standpoint of Lyle
6 evidence.

7 THE COURT: I think -- no. The standpoint of Lyle
8 evidence, if it's a non-convicted event, he's got to
9 prove it by clear and convincing evidence. If it's the
10 subject of a conviction, that requirement is removed
11 because it's been proven conclusively. Mr. *VICTIM* can
12 testify that he saw Mr. Taylor stand up in court and
13 admit during the course of a plea that he committed that
14 crime, the crime of criminal sexual conduct with a minor.
15 That's -- that's my view of the rule.

16 MR. BARR: Your Honor, you -- you -- are you saying
17 that on the direct examination, the prosecution can
18 elicit testimony from Mr. *VICTIM* establishing the
19 conviction during this direct testimony?

20 THE COURT: If he was present at the plea and saw him
21 enter the plea. Because that's an admission right there
22 by the Defendant. Otherwise, Ms. Barr can get on the
23 phone and can call the Georgetown County Clerk of Court
24 and get somebody to come up and prove the conviction.

25 MR. BARR: Your Honor, I just -- I think -- I think

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1 we've done -- this is just, you know, this is our
2 position. And you've allowed us, and I thank you for
3 allowing us to completely express our position on the
4 record. But I think, again, Mr. *VICTIM* should be, if
5 he's allowed to discuss the factual scenario under the
6 common scheme or plan ---

7 THE COURT: It should rise and fall on its own?

8 MR. BARR: Yes, sir. And not -- not use the
9 conviction ---

10 THE COURT: All right.

11 MR. BARR: --- as a basis -- as I said, I think that
12 where the problem really came -- would develop whereby
13 that might very well be an issue if the Defendant took
14 the witness stand and said, no, that did not occur.

15 THE COURT: All right. I'm with you there. Then,
16 all right, Ms. Barr, he can testify as to the events that
17 occurred, but let's stay away from the conviction. All
18 right?

19 MR. BARR: Thank you, sir.

20 (July 11, 2007)

21 THE COURT: All right. All right, Ms. Barr, are you
22 ready?

23 MS. BARR: The State's ready, Your Honor.

24 THE COURT: Mr. Barr, are you ready?

25 MR. BARR: Yes, sir.

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1 THE COURT: All right. Bring in the jury.

2 (Jury enters the courtroom at 10:18)

3 THE COURT: First of all, let me apologize for
4 keeping you in your jury room. I wanted to let you know
5 that at least yesterday afternoon when you folks departed
6 at about, I believe 4:30, maybe shortly before, don't
7 believe for one minute that we did the same. Because we
8 stayed here a substantial amount of time afterwards
9 dealing with issues involving this case. And, again,
10 that's not -- it's not unusual to do because the
11 proceedings that we -- or the rules that we follow do
12 call for certain things to be done to streamline the
13 process. And that's what we've been doing. And even
14 this morning, I know I asked you to be here at 9:45. The
15 lawyers have been working extremely hard in continuing to
16 crystalize the case for your consideration, and that's
17 what we've been trying to accomplish in the courtroom
18 this morning. Again, at the end of the case, when you
19 retire to deliberate, you will be in that room that
20 you've been in so far this week, and we won't be in there
21 with you. And you will have all the time you need to
22 discuss the issues that have arisen in this particular
23 case. I just didn't want you to think that we were
24 twiddling our thumbs out here and had better things to do
25 than worry about keeping you in that room. We have been

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1 working on this case and we will continue with the
2 testimony and the presentation of evidence this morning.

3 We probably will work for another 45 minutes and
4 then take a break. And then I will, after you come back
5 out, I will have selected the foreperson for this jury.
6 And then when the foreperson is seated, I'll let the
7 bailiff know who it is and the foreperson will have a
8 seat in the front seat to my far right.

9 Ms. Barr, is the State ready to continue with its
10 presentation of evidence?

11 MS. BARR: Your Honor, we are.

12 THE COURT: All right. You can call your next
13 witness.

14 MS. BARR: Call VICTIM
15 (VICTIM is placed under oath).

16 VICTIM - DIRECT EXAMINATION BY MS. BARR:

17 Q. VICTIM let me get you to state your full name for me.

18 A. VICTIM

19 Q. And where do you live now?

20 A. Surfside.

21 Q. Is that in Horry County?

22 A. Yes, ma'am.

23 Q. How long have you lived there?

24 A. 13 years or so.

25 Q. Okay.

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- 1 A. 16 years.
- 2 Q. How old are you now?
- 3 A. I'm 19 years old.
- 4 Q. And what's your birth date?
- 5 A. July 27th, 1987.
- 6 Q. Were you born in Horry County?
- 7 A. No, ma'am. I was born in Darlington.
- 8 Q. All right. Now, your mom is Pam ; is that
- 9 correct?
- 10 A. Yes, ma'am.
- 11 Q. She was seated next to you at the Prosecution's
- 12 table; is that correct?
- 13 A. Yes, ma'am.
- 14 Q. Is your father here in the courtroom as well?
- 15 A. Yes, ma'am.
- 16 Q. And what's your dad's name?
- 17 A. Wade .
- 18 Q. And he's right behind your mom?
- 19 A. No, he's right behind you.
- 20 Q. Okay. Do you have any other relatives here?
- 21 A. Yes, ma'am. My littlest brother.
- 22 Q. Okay. And what's his name?
- 23 A. Bryce .
- 24 Q. How old is he?
- 25 A. He'll be 13 this Friday.

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1 Q. So your mom mentioned that she has three sons. And
2 it's you, Bryce, and who's the other young man?

3 A. David.

4 Q. Okay. And how old is David?

5 A. David is 17.

6 Q. And your two younger brothers live in -- home with
7 your parents?

8 A. Yes, ma'am.

9 Q. Okay. Now, you're a father? Is that right?

10 A. Say it again, I'm sorry.

11 Q. You're a father now, right?

12 A. Yes, ma'am.

13 Q. Okay. You have a daughter?

14 A. Yes, ma'am.

15 Q. What's her name?

16 A. McKenzie.

17 Q. How old is McKenzie?

18 A. She just turned one.

19 Q. And who is her mother?

20 A. Carla Casper.

21 Q. Now, are you and Carla engaged?

22 A. Yes, ma'am.

23 Q. All right. And does Carla live with you?

24 A. Yes, ma'am. She does.

25 Q. Y'all getting married next year?

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- 1 A. Yes, ma'am, in April.
- 2 Q. Okay. Now, was Carla here yesterday?
- 3 A. Yes, ma'am.
- 4 Q. But she's not here today?
- 5 A. No, ma'am.
- 6 Q. She had a doctor's appointment?
- 7 A. Yes, ma'am.
- 8 Q. All right. Sir, tell me a little bit about your
- 9 childhood growing up.
- 10 A. I played a lot of sports.
- 11 Q. Okay.
- 12 A. Played a lot of baseball and football and hockey.
- 13 Played a little bit of soccer. Went fishing a lot.
- 14 Q. Did boy things?
- 15 A. Yes, ma'am.
- 16 Q. Had a pretty normal childhood growing up?
- 17 A. For the most part, yes, ma'am.
- 18 Q. Now, you always lived with your parents?
- 19 A. Yes, ma'am.
- 20 Q. Were you ever aware of any serious marital
- 21 difficulties between the two of them?
- 22 A. No, ma'am.
- 23 Q. You were pretty much shielded from anything like
- 24 that?
- 25 A. Yes, ma'am.

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1 Q. Now, of course you -- you know the Defendant, Robert
2 Troy Taylor?

3 A. Yes, ma'am.

4 Q. I want you to tell the ladies and gentlemen of the
5 jury how it is that you know him.

6 A. He was a preacher at our church.

7 Q. Okay. And what was the name of the church?

8 A. Low Country Community Church.

9 Q. Okay. Where was it located?

10 A. In Murrells Inlet.

11 Q. Do you know how long he was the preacher over there?

12 A. I want to say it was three years.

13 Q. Okay. Three years being the time that you were
14 there; is that right?

15 A. Yes, ma'am.

16 Q. You all have a new pastor over there?

17 A. I know there is a pastor over there, but we don't go
18 there no more.

19 Q. Now, in -- prior to November of 1998, what type of
20 relationship did you have with the Defendant?

21 A. It was a very close relationship. Very trusting,
22 you know. He was my preacher, so.

23 Q. Did you see him often prior to that -- to November
24 of 1998?

25 A. Just about every day.

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1 Q. Okay. Now what about your -- your mom or your
2 parents, I guess your mom in particular, did she have a
3 close relationship ---

4 A. Yes, ma'am.

5 Q. --- with the Defendant?

6 A. Yes, ma'am.

7 Q. And you observed that?

8 A. Yes, ma'am.

9 Q. Did the two of you confide in him about certain
10 things?

11 A. I wouldn't say in him, you know.

12 THE COURT: Could you move the microphone, Ms.

13 Williams, so it'd be more in front of Mr. VICTIM? I
14 don't know if the speakers work better out there, but I'm
15 having a little difficulty. All right. Thank you.

16 Q. Now, do you all have a type of youth activities, an
17 organization within your church during this time, in
18 1998?

19 A. Yes, ma'am.

20 Q. Okay. How many members, if you recall?

21 A. In the youth?

22 Q. Yes.

23 A. At least ten.

24 Q. Were they male and female?

25 A. Yes, ma'am.

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1 Q. Okay. Now, back in November of 1998, did you
2 accompany the Defendant on a camping trip that was
3 sponsored by the church?

4 A. Yes, ma'am.

5 Q. Okay. At that time, were there other members of the
6 congregation also with you?

7 A. Yes, ma'am.

8 Q. How many others?

9 A. At least six or seven.

10 Q. Were they both male and female or just male?

11 A. Just all males.

12 Q. Now, do you remember any of the folks who
13 accompanied you on that trip?

14 A. A couple of them.

15 Q. Do you maintain any contact with them now?

16 A. No, ma'am.

17 Q. And I understand that's been some nine years ago.
18 Have you seen any of them within the last year or two?

19 A. I see them from time to time, yes, ma'am.

20 Q. Just in passing?

21 A. Yes, ma'am.

22 Q. Okay. All right. Now, back in November of 1998,
23 what was your understanding as to where you were going
24 and why?

25 A. We just was told we were going on a camping trip.

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1 Q. Okay.

2 A. With the church, with youth group.

3 Q. Do you recall whether any other adult members of the
4 church accompanied you on the trip other than the
5 Defendant?

6 A. Yes, ma'am. But I don't know his name.

7 Q. Where did you leave from to get to the camping site?

8 A. Left from church.

9 Q. And how did you get from the church to the camping
10 site?

11 A. A van.

12 Q. And do you remember who was driving the van?

13 A. As far as I can remember, Mr. Taylor.

14 Q. The Defendant?

15 A. Yes, ma'am.

16 Q. All right. And all of the boys just kind of packed
17 in the van?

18 A. Yes, ma'am.

19 Q. Where'd y'all go?

20 A. Just outside of Andrews.

21 Q. Okay.

22 A. On 521.

23 Q. Okay. And do you recall any of the landmarks, or
24 does anything about where the actual campsite was stand
25 out in your mind?

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1 A. The campsite was actually back in the woods right
2 next to the Black River. You had to pass like a bunch
3 cornfields just to get back there to it.

4 Q. Okay. And you remember that?

5 A. Yes, ma'am.

6 Q. Now, there are certain parts of Andrews that fall
7 within Williamsburg ---

8 MR. BARR: Objection to leading to witness, Your
9 Honor.

10 THE COURT: Sustained.

11 Q. Are there certain parts of Andrews that fall in
12 Williamsburg and Georgetown County?

13 A. Yes, ma'am.

14 Q. All right. Now, tell us what happened when you got
15 to the -- to the campsite.

16 A. When we first got there?

17 Q. Yes, sir.

18 A. We unloaded everything. Set the tent up and had a
19 big tarp we slept under, set that up. And made a bon
20 fire, cooked food and marshmallows.

21 Q. Okay. Did you have a good time?

22 A. Yeah, for the most part.

23 Q. Okay. How long did you all stay up?

24 A. Till around ten or 11.

25 Q. Now, this was in November. What was the temperature

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1 and the weather like?

2 A. It was pretty cold. And it was raining.

3 Q. Okay. You remember that?

4 A. Yes, ma'am.

5 Q. Okay. All right. Now, you all stayed up until
6 about ten or 11. Tell me what happened once you all
7 retired to bed, and what were the sleeping arrangements
8 like?

9 A. We all slept under a big tarp. Everybody. Mr.
10 Taylor had his own tent. We just put all the stuff in
11 there.

12 Q. Okay.

13 A. We were all underneath the tarp.

14 Q. Okay. So you were asleep in the tarp with the other
15 six or seven boys who had gone on the trip?

16 A. Yes, ma'am.

17 Q. Okay. Now, during this time in November of '98, can
18 you tell me what your size was -- was like?

19 A. I was about 11 years old, less than a hundred
20 pounds.

21 Q. Okay. Now, back during this time, was the Defendant
22 pretty much similar to how he appears now in terms of his
23 physical stature?

24 A. Yes, ma'am.

25 Q. Okay. Tell me what happened after you retired to go

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1 to sleep.

2 A. I was asleep. And I was awakened by Mr. Taylor. He
3 grabbed me by my mouth and picked me up and took me to
4 the other tent.

5 Q. Was there anybody else in the other tent when he
6 took you there?

7 A. No, ma'am.

8 Q. Okay. Tell us what happened after he grabbed you by
9 the mouth and took you to the other tent.

10 A. He took me to the tent and proceeded to take my
11 clothes off and make me touch him.

12 Q. Okay. You -- I understand this is difficult. I
13 need you to tell me specifically where did he make you
14 touch him?

15 A. He made me touch his penis, rectum, proceeded to
16 touch me in my penis and my rectum.

17 Q. Was he saying anything during this time?

18 A. Just be quiet.

19 Q. All right. What happened next?

20 A. He continued to touch me. Then he proceeded to make
21 me have anal sex with him.

22 Q. When you say he made you have anal sex with him,
23 what did he do with his body to your body?

24 A. He stuck his penis in my rectum.

25 Q. Was that painful?

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1 A. Yes, ma'am.

2 Q. How did you respond to that?

3 A. I couldn't really do anything. I was pretty much
4 helpless.

5 Q. Do you recall whether or not he ejaculated?

6 A. He was ---

7 Q. I'm sorry?

8 A. He was rushed I guess. I don't really recall that,
9 no.

10 Q. What happened after he placed his penis in your
11 anus?

12 A. He proceeded to have sex with me I guess.

13 Q. Then what happened next?

14 A. He stopped. Took me back to the tarp, proceed to
15 make me sleep right next to him the rest of the night.

16 Q. So he didn't sleep in his tent?

17 A. No, ma'am.

18 Q. He slept next to you?

19 A. Yes, ma'am.

20 Q. Did he hold you while he was ---

21 A. Yes, ma'am.

22 Q. --- sleeping next to you? Did he tell you anything
23 after the rape was completed?

24 A. Yes, ma'am. He told me not to tell anyone. He was
25 pretty forceful, stern.

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1 Q. Okay. How did you perceive his instructions to you
2 not to tell anyone?

3 A. I was scared. I was threatened. You know, I was
4 just really, really scared.

5 Q. Do you recall what happened, approximately what time
6 it was that you went back to the church from the return
7 trip?

8 A. It was the next day.

9 Q. Okay.

10 A. Next afternoon.

11 Q. Do you remember who came to pick you up?

12 A. My mother.

13 Q. VICTIM did you tell anybody on the camping trip at
14 that time what had happened to you?

15 A. No, ma'am.

16 Q. When your mom came to pick you up, did you tell her
17 what had happened to you?

18 A. No, ma'am.

19 Q. I need you to tell us why you didn't tell anybody.

20 A. I was scared. I was ashamed. Just kept trying to
21 pretend like it never happened. Didn't want anybody to
22 find out. I was just a kid, you know.

23 Q. Okay. Now, after that incident for, say, the next
24 six months, what was your contact like with the
25 Defendant?

HEARING

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1. A. I still had to go to church because my mom worked
2 there. I still went. I wasn't going to tell her what
3 happened.

4 Q. Did he treat you any differently?

5 A. He didn't really talk to me too much. And then when
6 he did, he acted like nothing happened.

7 Q. Okay. Did the rape ever happen again?

8 A. Yes, ma'am.

9 MR. BARR: Objection, Your Honor.

10 THE COURT: Objection is noted and overruled, and
11 they'll continue throughout this line of questioning Ms.
12 Barr?

13 Q. Can you tell us about the second time it happened?

14 A. Tell you again exactly what happened?

15 Q. Where did it happen the second time?

16 A. At his house.

17 Q. Tell it how it is that you were occasioned to get to
18 his house.

19 A. We had another youth trip to the beach.

20 Q. Okay. Now, when you say we had another youth trip
21 to the beach, who is -- who are you referring to when you
22 say we?

23 A. The youth group at church.

24 Q. Who were all the adults that accompanied you on the
25 beach trip?

HEARING

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- 1 A. I don't remember their names.
- 2 Q. Do you remember how many adults it was?
- 3 A. A couple. I mean, there was a couple vans.
- 4 Q. How old were you at the time of this second trip?
- 5 A. I was 12.
- 6 Q. 12 years old?
- 7 A. Yes, ma'am.
- 8 Q. And this would've happened I guess then in 1999
- 9 then, if you were 12?
- 10 A. Yes, ma'am.
- 11 Q. Do you remember whether it was warm or whether it
- 12 was cold at the time it happened?
- 13 A. It was hot.
- 14 Q. So it was during summer months then?
- 15 A. Yes, ma'am.
- 16 Q. 1999?
- 17 A. Yes, ma'am.
- 18 Q. Do you -- where'd you go?
- 19 A. To Huntington Beach State Park.
- 20 Q. Where is that?
- 21 A. It's in Murrells Inlet.
- 22 Q. Okay, that's in Georgetown County?
- 23 A. Yes, ma'am.
- 24 Q. And you all had gone to the state park. How many
- 25 kids were with you?

HEARING

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- 1 A. At least ten.
- 2 Q. What did y'all do at the state park?
- 3 A. We went to the beach.
- 4 Q. Okay. And what'd you all do at the beach?
- 5 A. Swam in the ocean.
- 6 Q. Okay. What happened once you swam in the ocean?
- 7 What happened next?
- 8 A. We went back to the church.
- 9 Q. Okay.
- 10 A. And we went to take showers, but all the showers
- 11 were taken up.
- 12 Q. Okay. So you all -- your church was equipped with
- 13 showers?
- 14 A. Yes, ma'am. It had a couple of them.
- 15 Q. And you wanted to kind of wash the sand and the
- 16 ocean water off of you?
- 17 A. Yes, ma'am.
- 18 Q. And they were all being used by children?
- 19 A. Yes, ma'am.
- 20 Q. Okay. What happened after you realized that all of
- 21 the showers were being occupied?
- 22 A. That's where Mr. Taylor asked us if we wanted to go
- 23 back to his house to take a shower.
- 24 Q. Okay. How far was his house from the church?
- 25 A. Less than a half a mile.

HEARING

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- 1 Q. All right. So he asked you the question, and you
2 said you wanted to go take a shower?
- 3 A. (Nods head affirmatively).
- 4 Q. I need you to say yes or no.
- 5 A. Yes, ma'am.
- 6 Q. Was there anybody else with you?
- 7 A. Yes, ma'am.
- 8 Q. Okay. Who -- who else was with you?
- 9 A. Charles H.
- 10 Q. Now, who is Charles H. ?
- 11 A. He's a friend of mine. He's just a friend.
- 12 Q. Gotcha. Now, how old was he at the time?
- 13 A. 12.
- 14 Q. About the same age as you?
- 15 A. Yes, ma'am.
- 16 Q. Okay. He wanted to take a shower, too?
- 17 A. Yes, ma'am.
- 18 Q. When you got to the Defendant's house, who was there
19 at the house?
- 20 A. His wife.
- 21 Q. Who is his wife?
- 22 A. Allyson.
- 23 Q. Is she here today?
- 24 A. Yes, ma'am.
- 25 Q. Where is she?

HEARING

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- 1 A. She's right behind you.
- 2 Q. Behind me?
- 3 A. Yes, ma'am.
- 4 Q. All right. Now, she was there. Was there anybody
- 5 else there?
- 6 A. Besides me and Charles, no. Not that I recall.
- 7 Q. Okay. Do you recall where Allyson was when you came
- 8 into the home?
- 9 A. Yeah, she was in the kitchen.
- 10 Q. Okay. All right. Well, do you remember what she
- 11 was doing?
- 12 A. Cooking.
- 13 Q. Okay. So you got back. Do you recall -- When you
- 14 got to his house, do you recall whether it was daylight
- 15 or night -- nighttime?
- 16 A. It was still daylight.
- 17 Q. Okay. So you went into the bathroom to take a
- 18 shower?
- 19 A. Yes, ma'am.
- 20 Q. Where was the Defendant when you first went into the
- 21 bathroom to take a shower?
- 22 A. He was out in the living room.
- 23 Q. Okay. All right. Tell me what happened when you
- 24 went and you got in the shower to take your shower.
- 25 A. Mr. Taylor came in and took off his clothes and got

HEARING

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- 1 in the shower. He proceeded to make me touch him, his
2 penis and he touched me.
- 3 Q. Touched you where?
- 4 A. My penis and my rectum.
- 5 Q. Okay. Do you recall whether the water was running
6 during this time?
- 7 A. Yes, ma'am.
- 8 Q. Where was Charles?
- 9 A. Charles was in the guest bathroom.
- 10 Q. Okay. And as far as you know, was Allyson still ---
- 11 A. Yes, ma'am.
- 12 Q. --- in the kitchen?
- 13 A. Yes, ma'am.
- 14 Q. Okay. All right. Please continue.
- 15 A. And he came in and he started touching me, my penis
16 and my rectum. And he proceeded to make me have anal sex
17 with him.
- 18 Q. When you say anal sex, do you mean he placed his
19 penis inside your rectum?
- 20 A. Yes, ma'am.
- 21 Q. Was this also -- was it painful?
- 22 A. Yes, ma'am.
- 23 Q. How did it end?
- 24 A. He stopped.
- 25 Q. Stopped?

HEARING

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- 1 A. Yes, ma'am.
- 2 Q. Did he tell you anything once it ended?
- 3 A. Not to tell anybody.
- 4 Q. Told you again not to tell anybody?
- 5 A. Yes, ma'am.
- 6 Q. And did you tell Charles that day what had happened
- 7 to you?
- 8 A. No, ma'am.
- 9 Q. Did you tell his wife, Mrs. Taylor, what had
- 10 happened to you?
- 11 A. No, ma'am.
- 12 Q. Now, at the time you indicated that he was married.
- 13 Were there any other children there other than you and
- 14 Charles? In other words, does he have any children?
- 15 A. Yes, ma'am. He does.
- 16 Q. Were they there?
- 17 A. I think one of them -- the youngest, his son was
- 18 there.
- 19 Q. How old was his son at that time?
- 20 A. He was young. I really don't know.
- 21 Q. Younger than you?
- 22 A. Yes.
- 23 Q. Explain to us as best you can why you didn't run and
- 24 tell Allyson what had happened to you or didn't scream
- 25 for help.

HEARING

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1 A. What was I going to do, you know? There wasn't --
2 he was the biggest person in the house. There was not
3 really like somebody -- what was Allyson going to do, you
4 know? What is Charles -- what is he going to do? He's
5 12. Charles is less than a hundred pounds.

6 Q. Now, how did you get from his house, I'm assuming
7 back to the church?

8 A. He drove us.

9 Q. Say again.

10 A. He drove us there.

11 Q. And how'd you get to his house?

12 A. He drove us.

13 Q. And I'm assuming you didn't tell your mom about what
14 happened?

15 A. No, ma'am.

16 Q. *VICTIM* if you can, describe your life and the four or
17 five years after the rapes.

18 A. Pretty quiet. I kind of kept to myself. Still
19 played baseball and hockey, football for a long time
20 after that. Started doing drugs.

21 Q. Okay.

22 A. And started drinking a lot.

23 Q. Tell me when it was that you first began to do
24 drugs.

25 A. I was 14.

HEARING

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- 1 Q. What type of drugs would you do?
- 2 A. I was just smoking weed.
- 3 Q. Smoking weed. That was marijuana?
- 4 A. Yes, ma'am.
- 5 Q. And where were you getting it from, friends or
- 6 school or?
- 7 A. Friends.
- 8 Q. What type of effect would marijuana have on you?
- 9 A. Made me happy.
- 10 Q. Made you happy?
- 11 A. Yeah.
- 12 Q. At some point did your marijuana usage graduate to
- 13 more serious drugs?
- 14 A. Yes, ma'am.
- 15 Q. And when?
- 16 A. When I was 16, going on 17.
- 17 Q. Okay. Now, when did you start drinking? Consuming
- 18 alcohol?
- 19 A. When I was 15.
- 20 Q. Around 15?
- 21 A. Yes, ma'am.
- 22 Q. What type of effect would alcohol have on you?
- 23 A. Made me angry. It kind of calmed me down, too, you
- 24 know. Just -- only thing about alcohol was that it only
- 25 drowned out for so long and then I'd start thinking about

HEARING

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- 1 it.
- 2 Q. When you say drown it out and start thinking about
- 3 it, what it are you talking about?
- 4 A. The rapes. I'd think about it and then, before it
- 5 was all over, I would think about.
- 6 Q. What kind of alcohol did you drink?
- 7 A. Pretty much anything.
- 8 Q. Anything you could your hands on?
- 9 A. Anything I could get my hands on, yes, ma'am.
- 10 Q. Okay. Now you talked about around age 16 is when
- 11 you graduated to more serious drugs. When we say more
- 12 serious drugs, tell the jury what you mean, what type of
- 13 more serious drugs.
- 14 A. I did cocaine for a little bit and then ---
- 15 Q. And what kind of effect would cocaine have on you?
- 16 A. I just forget everything.
- 17 Q. Is that why you were taking it?
- 18 A. Yes, ma'am.
- 19 Q. You wanted to forget?
- 20 A. Yes, ma'am.
- 21 Q. Did you take anything, any types of drugs other than
- 22 cocaine and marijuana?
- 23 A. Yes, ma'am.
- 24 Q. What else did you take?
- 25 A. I used to take a lot of pills.

HEARING

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- 1 Q. What kind of pills?
- 2 A. Mostly Xanaxes and Klonopin and stuff like that.
- 3 Q. Xanax and what else?
- 4 A. Klonopin.
- 5 Q. All right. Tell me what Xanax is.
- 6 A. I believe it's an antidepressant.
- 7 Q. Okay. What type effect would Xanax have on you?
- 8 A. Made me very sleepy ---
- 9 Q. Okay.
- 10 A. -- mello.
- 11 Q. All right. Now, were these prescription medications
- 12 you were getting or not --
- 13 A. I was getting them from school.
- 14 Q. Now, Klonopin, tell me what that is.
- 15 A. That, I honestly don't know. I just would take it.
- 16 Q. You were putting junk in your body?
- 17 A. Yes, ma'am.
- 18 Q. What kind of effect would it have on you?
- 19 A. Same thing.
- 20 Q. Make you mellow?
- 21 A. Yes.
- 22 Q. Now, would you do these drugs separately or in
- 23 combination with each other and with alcohol?
- 24 A. Well, when I started taking the pills, I didn't do
- 25 cocaine anymore. I didn't have any money.

HEARING

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1 Q. Okay.

2 A. I was still smoking and doing pills, wasn't really
3 drinking though.

4 Q. Now, tell me how it is that you graduated from the
5 marijuana and alcohol to the Xanax and Klonopin and
6 cocaine.

7 A. They were easier to get.

8 Q. Now, did they -- did it ever come a time when you
9 tried to hurt yourself?

10 A. Yes, ma'am.

11 Q. Tell us about that. How old were you?

12 A. I was 17.

13 Q. Okay.

14 A. I took nine Xanaxes and crushed up and passed out in
15 my room.

16 Q. You were at home when it happened?

17 A. Yes, ma'am.

18 Q. Do you remember how long you were out?

19 A. No, ma'am.

20 Q. What's the first thing you remember when you came
21 to?

22 A. My mother. Just looking at my mother.

23 Q. Up until this point in time, had you ever told
24 anybody what had happened to you?

25 A. No, ma'am.

HEARING

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1 Q. Had you ever gotten any counseling?

2 A. No, ma'am.

3 Q. When was the first time you told somebody what had
4 happened to you? How old were you?

5 A. 17.

6 Q. Who did you tell?

7 A. A friend at school.

8 Q. What -- is that a male or a female?

9 A. That's a male.

10 Q. What made you decide to tell that person, and in
11 what context was it -- was it revealed?

12 A. Honestly, I don't -- I don't know why I told him. I
13 just felt comfortable around him. And we were talking
14 about something and he said something to me -- I just
15 told him.

16 Q. Now, when you told him, did you then go to law
17 enforcement? Or how is it that it -- it got to the level
18 of a formal complaint arised?

19 A. Well, his -- his aunt was a -- counseling somebody
20 that she knew -- he knows that his aunt counsels people
21 that their children have been molested or raped. And he
22 asked me if he could tell her. And I said I don't care.
23 He told her, and then they took me out to dinner the next
24 night and I went home and I had -- they told me to tell
25 my parents, and I told my parents.

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HEARING

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1 Q. And that's when you told mom and dad?

2 A. Yeah.

3 Q. Now, did -- as a result of that conversation, did
4 you then go to law enforcement with your parents?

5 A. Yes, ma'am.

6 Q. And you reported both the Georgetown County incident
7 as well as the one here in Williamsburg?

8 A. Yes.

9 Q. Did you ever receive any counseling at all for what
10 had happened to you?

11 A. Yes, ma'am.

12 Q. When did you receive the counseling and where?

13 A. I first received counseling. I want to say six
14 months after I went to the police, I was at Strand
15 Psychiatric.

16 Q. Okay. Were you seeing a psychiatrist or a
17 psychologist?

18 A. Psychiatrist.

19 Q. How long did you treat with that person?

20 A. Not very long.

21 Q. Now, *VICTIM*, are you working?

22 A. Yes, ma'am.

23 Q. What do you do for a living?

24 A. I'm a plumber.

25 Q. Okay. How long have you been a plumber?

HEARING

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1 A. Almost two years.

2 Q. Are you clean now?

3 A. Oh, yes, ma'am.

4 Q. How long you been clean?

5 A. Almost three years.

6 Q. Are you required to get random drug screens with
7 your job?

8 A. Yes, ma'am.

9 Q. Passed all your drug screens?

10 A. Yes, ma'am.

11 Q. How is it that you were able to -- to get clean and
12 not mess with drugs anymore?

13 A. I almost killed myself, and I honestly never touched
14 it again.

15 Q. Was counseling helpful to you, beneficial to you?

16 A. Yes, ma'am.

17 MS. BARR: Your Honor, may counsel and I approach the
18 bench?

19 THE COURT: Yes.

20 (Off the record bench conversation).

21 THE COURT: Ladies and gentlemen of the jury, we have
22 a matter that we need to take up outside of your
23 presence, and we'll do that at this point. And when you
24 do come back in, I will -- I already have a foreperson in
25 my mind. So I will instruct the bailiff to have the

HEARING

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1 witness?

2 Ms. Barr: No.

3 The Court: All right. Then I'm going to ask
4 Mr. *VICTIM* to resume his position in the witness chair.

5 Mr. *VICTIM* you're still under oath. All right?

6 Mr. *VICTIM*: Yes, sir.

7 The Court: Are you ready for the jury, Ms.

8 Barr?

9 Ms. Barr: Yes, sir.

10 The Court: Mr. Barr?

11 Mr. Barr: Yes, sir, Judge.

12 The Court: All right. Bring in the jury and
13 have the forelady come out and I'll speak to her. Thank
14 you.

15 (Jury in 11:23 a.m.)

16 The Court: All right. Thank you for your patience
17 Ladies and Gentlemen. Ms. Jones, I have selected you to
18 be the foreperson of this jury. I will tell you that the
19 job of foreperson comes with some added responsibility
20 but absolutely no additional pay. As I will tell you
21 later on during the trial, your role as foreperson does
22 not give you any greater authority than any of your
23 fellow jurors. You don't have a greater vote, you don't
24 have a monopoly on discussions during deliberations.
25 Your job will solely be to make sure that orderly

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1 deliberations are conducted and to make sure that
2 everyone who wants to speak will get the chance to speak
3 and to make sure that everyone who wants to speak gets
4 the chance to speak and then to make sure that the
5 decision of the jury is unanimous and then to complete
6 the verdict form accordingly. Some forepersons probably
7 think that being a foreperson gives them the opportunity
8 to run the show that is not going to be the case, that is
9 not the way that the rules work. I will talk to you
10 later during the jury charge about your role. From now
11 on until the conclusion of the trial you'll occupy that
12 seat and Ms. Dollard you'll continue to occupy that seat.
13 All right. Ms. Barr and Mr. Barr at this point I'm going
14 to give instructions to the jury.

15 You've heard evidence that the Defendant Mr.
16 Taylor has committed an act of, another bad act other
17 than the one for which he is now on trial. This
18 testimony, if you conclude it is true, can only be
19 considered by you on the question of whether a common
20 scheme or plan existed and for no other reason and for no
21 other person. Now, you can give this evidence that
22 you've heard about a prior or another bad act, you can
23 give that evidence the weight and value to which you deem
24 it is entitled. Again, on the sole issue of whether or
25 not a common scheme or plan existed. Now, you must not

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1 consider the evidence of the commission of another bad
2 act as proof of the Defendant's guilt in this
3 particularly case and we'll speak to that more as part of
4 my charge, but I wanted to give you that charge at this
5 time.

6 Ms. Barr, do you have anymore questions for
7 this witness.

8 Ms. Barr: Judge, I'm sorry, I have just two.

9 The Court: All right. Thank you. You can go
10 forward.

11 Ms. Barr: Thank you, sir.

12 MR. VICTIM- CONTINUED EXAMINATION BY MS. BARR:

13 Q: Now, VICTIM when you and I last spoke in front of the
14 jury you were telling us that you had been clean for
15 about three years now.

16 A: Yes, ma'am.

17 Q: Let me ask you one particular question regarding the
18 crime that happened back in November of 1998. It
19 was reported to law enforcement. You testified on
20 direct about the directions and how you got to the
21 camp site, is that correct?

22 A: Yes, ma'am.

23 Q: Did you give those same directions to Law
24 Enforcement to help them find it?

25 A: I don't believe I understand what you're saying.

HEARING

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1 Q: Did you tell law enforcement where the camp site was
2 in terms of what it was near ...

3 Mr. Barr: Objection, Your Honor, she's leading
4 the witness.

5 The Court: Overruled.

6 Q: Did you give directions to law enforcement about
7 where the camp site was and how you got there?

8 A: I tried to to the best of my knowledge, yes, ma'am.

9 Q: Now, VICTIM have you understood all my questions?

10 A: Yes, ma'am.

11 Q: Have you answer them truthfully?

12 A: Yes, ma'am.

13 Ms. Barr: Thank you, sir. Please answer Mr.
14 Barr's questions.

15 Mr. VICTIM - Cross Examination by Mr. Barr:

16 Q: The directions that Ms. Barr has indicated that you
17 gave to law enforcement, what were the directions
18 that you gave to law enforcement?

19 A: That we were about a mile in the woods and that it
20 was just outside of Andrews. At the time I didn't
21 know what the highway was. Now, I know. It's 521.

22 Q: That's all you told them?

23 A: Yes.

24 Q: And you're sure about that?

25 A: Pretty sure, yes, sir.

HEARING

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1 Q: And you've never been out in the woods and showed
2 law enforcement where you believe that site occurred
3 where you had a camp site?

4 A: No, sir.

5 Q: All right. Mr. *VICTIM*, let me just ... I introduced
6 myself to you a little bit yesterday and I want to
7 just talk a little bit about a couple of things.
8 First of all, as I understand it you initially
9 attempted to report what you claim to have been and
10 I'll call it the Williamsburg County incident for
11 lack of a better description.

12 A: Okay.

13 Q: You attempted to make a report to Georgetown County?

14 A: Yes, sir.

15 Q: And they didn't receive your report?

16 A: Who's that?

17 Q: Georgetown County officials.

18 A: They did, but they couldn't follow it so they ...

19 Q: Now, would it be fair to say that your report of the
20 Georgetown County incident which you claim took
21 place at Mr. Taylor's house did not come until 6
22 months after?

23 A: Yes.

24 Q: Six months. So, now, if I understand this correctly
25 you reported the incident whereby you claim you were

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1 sodomized by Mr. Taylor at the camp site and you
2 waited six months after that to report the incident
3 when you claim you were sodomized again at his
4 house? That is correct?

5 A: Well, I thought you were talking about six months in
6 time?

7 Q: Yes, sir.

8 A: You're talking about the time that I reported it or
9 from the time that ...

10 Q: From the time you reported the incident that you
11 claim occurred at the camp site, it was six months
12 before you actually reported the incident that
13 occurred at Mr. Taylor's house.

14 A: About that, yeah.

15 Q: So, now, after Mr. Taylor sodomized you at the camp
16 site for whatever reason you didn't say anything to
17 any law enforcement people about anything that took
18 place at Mr. Taylor's house?

19 A: No.

20 Q: All right. Now, let's talk about, I want to talk
21 first of all about the time lapse between the time
22 that you said that this incident occurred, which is
23 when you were 11 years old and the time that you
24 first divulged it to anybody was when you were
25 seventeen and you found a friend, is that correct?

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1 A: Yes.

2 Q: Now, during that time, did you continue to have
3 direct involvement with Troy Taylor?

4 A: For a little bit; yes, sir.

5 Q: This would, of course, been after the alleged
6 incident in 1998?

7 A: Yes.

8 Q: At the time that you claimed the incident occurred
9 in 1998, if Mr. Taylor did what you said he did, did
10 you consider that wrong at that time?

11 A: Yes.

12 Q: But you didn't tell anybody?

13 A: No, I did not.

14 Q: Of course you give an elaborate explanation today of
15 why you didn't. All that changed when you became
16 17?

17 A: I tried to kill myself, sir.

18 Q: Well, you say you tried to kill yourself by
19 overdosing with drugs.

20 A: Yes.

21 Q: When you started taking these drugs, I believe you
22 indicated on direct examination by that you were
23 smoking marijuana?

24 A: Uh-huh (affirmative response).

25 Q: Snorting cocaine?

HEARING

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- 1 A: Yes, sir.
- 2 Q: Did you take any methamphetamine or Xanax or what?
- 3 A: No, sir. I did not.
- 4 Q: You tried to kill yourself?
- 5 A: Yes.
- 6 Q: After you tried to kill yourself, did you go to the
- 7 hospital?
- 8 A: No, sir. I didn't.
- 9 Q: You didn't go to the hospital?
- 10 A: No, I did not.
- 11 Q: Did anybody on the squad have to come and get you
- 12 and pump your stomach?
- 13 A: No, sir. They did not.
- 14 Q: Well, now, your effort to kill yourself really
- 15 wasn't too serious. Apparently, it didn't do you a
- 16 lot of harm, did it?
- 17 A: I wouldn't say that.
- 18 Q: Did you get high when you took them?
- 19 A: I passed out, sir.
- 20 Q: You passed out?
- 21 A: Uh-huh (affirmative response).
- 22 Q: Now, of course, as you graduated from one degree of
- 23 chemical dependency, you went on up to another?
- 24 A: Yes.
- 25 Q: Now, of course, if you were suicidal at 17, you

HEARING

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1 certainly had the ability to seek some kind of
2 medical assistance?

3 A: Yes.

4 Q: But you didn't do that either, did you?

5 A: No, sir.

6 Q: You didn't tell anybody about this alleged incident
7 in 1978 even though you tried to kill yourself, you
8 were strung out on dope, you were smoking reefer,
9 did it bring you pleasure when you smoked reefer?

10 A: For a little while; yes, sir.

11 Q: You enjoyed it?

12 A: For a little bit; yes, sir.

13 Q: Mr. Taylor's house, what kind of house does he have?

14 A: He had a trailer.

15 Q: He had a mobile home?

16 A: Yes.

17 Q: It was a single wide mobile home, is that not
18 correct?

19 A: Yes, sir. I believe so.

20 Q: And you went to his house on the day that he
21 sodomized you, I believe you said his wife was
22 there?

23 A: Yeah.

24 Q: As well as one of his children?

25 A: Yes.

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- 1 Q: Now, when you go into the house, what room do you go
2 into?
- 3 A: The livingroom.
- 4 Q: Into the livingroom.
- 5 A: Yes, sir. When you open the front door.
- 6 Q: When you go to that front door what room do you go
7 to when you come out of the living room?
- 8 A: Into the hallway.
- 9 Q: Hallway. Where are the bathrooms in the hall.
- 10 A: I believe the bathroom is there on the right.
- 11 Q: Now, isn't it true, Mr. *VICTIM* that that bathroom
12 door is not closed, is it?
- 13 A: Say it again.
- 14 Q: It's not closed, the bathroom door?
- 15 A: When you enter it.
- 16 Q: It's open all the time, isn't it?
- 17 A: I've only been there once, sir. I don't really know.
- 18 Q: Wasn't it opened when you went in there and it was
19 opened when you went out?
- 20 A: The door was closed.
- 21 Q: Who closed it?
- 22 A: I closed it when I got into the shower.
- 23 Q: Pardon me.
- 24 A: I closed it when I got into the shower.
- 25 Q: You closed it when you got in the shower. Where was

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1 Mr. *VICTIM* when you got in the shower and closed the
2 door?

3 A: Sir.

4 Q: Where was Mr. Taylor when you got into the shower
5 and closed the door?

6 A: In the livingroom, sir.

7 Q: Is your testimony that after you closed the door and
8 got into the shower you were taking a shower?

9 A: Yes, sir.

10 Q: You were washing the sand off?

11 A: Yes, sir.

12 Q: Now, when Mr. Taylor came in, did he have clothes on
13 or was he naked or was he clothed?

14 A: I didn't physically see him walk into the bathroom,
15 sir. He was naked when he got into the shower.

16 Q: So, his clothes were off but you don't know whether
17 he took them off before he got into the bathroom or
18 after he got in there?

19 A: Yes.

20 Q: About how far, would you agree that before he came
21 into the bathroom, would you not agree that he would
22 have been no more than five to six feet away from
23 his wife?

24 A: Before?

25 Q: Yes, sir.

HEARING

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- 1 A: I would agree to that, yes, sir.
- 2 Q: And, and where was the child?
- 3 A: I'd say on the floor.
- 4 Q: Now, when you got into the shower, you were standing
5 up taking a shower?
- 6 A: Yes, sir.
- 7 Q: Somehow he managed to sodomize you, left out of the
8 shower with no clothes on?
- 9 A: Say that again.
- 10 Q: Sodomized you, left out of the shower naked.
- 11 A: Yes.
- 12 Q: Walked right by his wife naked?
- 13 A: I didn't say he did that, sir.
- 14 Q: Well, how did he get by here?
- 15 A: Well, I don't understand what you're saying.
- 16 Q: Well, let me explain it to you. If he got into the
17 shower, he didn't take a shower with his clothes on,
18 did he?
- 19 A: No, he didn't.
- 20 Q: His wife was standing up no more than five feet
21 away.
- 22 A: Not at the time we were in the shower, no she
23 wasn't. She was in the kitchen, we were in the back.
- 24 Q: Oh, you were in the back?
- 25 A: Yes, sir. In the bathroom.

HEARING

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1 Q: When he came out of the shower he did have his
2 clothes on?

3 A: Yeah.

4 Q: Now, of course, he would have been in the shower,
5 did he close the door when he came into the shower?

6 A: I guess.

7 Q: Pardon?

8 A: I guess so, yes, sir.

9 Q: Well, I don't want you to tell me unless you know,
10 now.

11 A: Yeah. I don't think anybody takes a shower with the
12 door open.

13 Q: So, with his wife right there, he came into the
14 shower with his clothes off, closed the door behind
15 him, got into the shower with you and got back out
16 naked?

17 A: Yeah.

18 Q: Did he dry himself off when he got out of the
19 shower?

20 A: Yes, sir. He did.

21 Q: And you also dried off?

22 A: Yes, sir.

23 Q: Now, the physical, the sexual act that you claimed
24 occurred in the shower, were you standing up at the
25 time this happened?

HEARING

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- 1 A: At first we were then we sat down.
- 2 Q: So you started the sexual act standing up?
- 3 A: Yes.
- 4 Q: And he placed his penis in your anal cavity standing
- 5 up?
- 6 A: No, sir, not until we sat down.
- 7 Q: Now, of course, I believe that you might have been
- 8 asked this question before, now can you tell me
- 9 whether you ever told any law enforcement people
- 10 that Troy Taylor took you in the shower and you sat
- 11 down in the shower?
- 12 A: I've done written statements and I've done oral
- 13 statements with the Georgetown County Sheriff's
- 14 Department.
- 15 Q: But now in your written statement you never put that
- 16 in there, did you?
- 17 A: No, not that one. I have given two.
- 18 Q: And you said you give it to the Georgetown County
- 19 Sheriff's Department?
- 20 A: Yes, sir.
- 21 Q: That was your oral statement?
- 22 A: Yes, sir, it was.
- 23 Q: But now when you were doing the writing, writing it
- 24 down you never wrote it down in your statement?
- 25 A: No, sir. Not this.

HEARING

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1 Q: Well, I tell you what I'm concerned about. The
2 actual physical sexual encounter. Let's look at the
3 situation that you said occurred in --- at the camp
4 site.

5 A: Yes, sir.

6 Q: Now, I believe, if I'm not mistaken that you gave a
7 statement on the first of June of 2005 and in that
8 statement you didn't say one word about Mr. Taylor
9 placing his penis in your anal cavity, did you?

10 A: No, sir. I didn't.

11 Q: But the fact is, in that June 5th statement, which is
12 before the other statement you did not say one word
13 about Mr. Troy Taylor placing his penis in your anal
14 cavity?

15 A: Yes, sir. That's correct.

16 Q: In a tent or anywhere else, did you?

17 A: No, sir.

18 Q: In fact, if I'm not mistaken, you in the description
19 of what you claimed took place, identification,
20 Defendant's Exhibit Number 1.

21 The Court: Mr. Barr, you have Defendant's 2?

22 Mr. Barr: Yes, sir. I'm going to have to find
23 it. I've got another copy of it.

24 Q: Isn't it true in your statement in June you
25 indicated that you went on this youth trip camping

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1 towards Andrews and it was sometimes between
2 February and April?

3 A: Yes. Because that was the time I thought it
4 happened.

5 Q: That's the time you thought it happened. How did
6 you manage to change what you thought happened?
7 Somebody told you something different?

8 A: No, sir. We found the church bulletin that had the
9 exact date on it.

10 Q: So, then the information that you gave in this
11 statement as far as when you claim this thing took
12 place, what you actually did is you went and matched
13 it with the church bulletin to make sure that
14 everything would come up right, didn't you?

15 A: Well, no, sir. I didn't.

16 Q: Well, what did you do? You said at first it
17 occurred between February and April.

18 Ms. Barr: Your Honor, first of all, we'd ask
19 that the witness be allowed to complete his answer and
20 that Mr. Barr not cut him off.

21 Mr. Barr: Your Honor, I'd be more than happy to
22 do that. I'm sorry if I've ...

23 The Court: All right. I'll sustain the
24 objection to the extent that you don't want that to
25 happen, that's just what happened.

HEARING

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1 Mr. Barr: Yes, sir.

2 The Court: If both Mr. Barr and the witness
3 will allow each other to finish then a space of dead air
4 takes place and the other one can resume. Continue Mr.
5 Barr.

6 Q: So, in other words, in your written statement to the
7 police detailing what you claimed happened you told
8 them that it occurred between February 8 and then
9 you subsequently went and got the Church bullentin
10 and let me find the Church bullentin. That's
11 defense Exhibit Number 3.

12 The Court: State's Exhibit.

13 Mr. Barr: State's Exhibit Number 3. I'm sorry.

14 Q: It's already in evidence, take a look at it if you
15 would, please.

16 Ms. Barr: Your Honor, I apologize for objecting
17 at this point but I think that counsel is referring to
18 two separate incidents. The document that is the State's
19 Exhibit refers to the incident that happened in
20 Williamsburg County and he's examining the witness about
21 the incident that happened in Georgetown County. They
22 are a year apart.

23 The Court: Well, I'll let you figure that out
24 on cross. I don't know because I haven't seen the
25 statements. I haven't seen the bullentin. But Mr. Barr

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1 can continue with his questions and I know that he has
2 now in front of the witness State's Exhibit Number Three.

3 Mr. Barr: Judge, this is not in reference to
4 anything that he testified to that happened in Georgetown
5 County. This is what this gentleman is on trial for.

6 The Court: Well, my point is and my ruling on
7 the objection is that the objection is overruled to the
8 extent that Ms. Barr can clarify whatever she thinks
9 needs to be clarified on redirect. So, I'll overrule the
10 objection.

11 Q: Now, this bullentin or flyer says *Items of Interest.*
12 *Youth Group Camping Excursion.* It says November 6
13 and 7. And it also says *Children's Ministry, Ms.*
14 *Linda Taylor.* Now, Are you claiming that this was
15 the Youth Group Excursion that you went on when you
16 were sodomized by Mr. Troy Taylor?

17 A: Yes.

18 Q: And do you not agree that the date of this excursion
19 on this piece of paper says November 6 and November
20 7 and you went back and you now claim that it
21 occurred on November 6 or 7 but your statement was
22 that it occurred in February?

23 A: Yes, sir.

24 Q: Well, you know, would you agree that with respect to
25 your memory, apparently you couldn't even remember

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1 if this occurred when it occurred other than to go
2 look at some piece of paper that described when the
3 excursion took place. Would you agree with that?

4 A: No. I don't remember the exact date, you know, I
5 knew it was cold outside, you know, just the place I
6 thought it was at, so.

7 Q: Well, well, let's look at this thing. You said that
8 you were on your way, you remember going home on the
9 way to Andrews and, of course, you do admit now or
10 do you not that as far as your going on this trip
11 that you were asked to go by Mr. H ?

12 A: Yes.

13 Q: Pardon me?

14 A: Yes, sir.

15 Q: And, of course, Troy Taylor, nor his mother ever
16 asked you to go along, did they?

17 A: He asked us, Charles said he wasn't going ...

18 Q: You said in your statement you went because Mr.
19 H asked you. That was one of the other
20 youths, one of your buds.

21 A: That's what it says.

22 Q: All right, sir. And, of course, I would assume that
23 insomuch as you claim you went because Mr. H
24 asked you, if Mr. H hadn't asked you, you
25 wouldn't have gone?

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1 A: Probably not.

2 Q: So inasmuch as you probably would not have gone, you
3 would have kind of been out on a camping trip and
4 this sodomizing you claimed took place couldn't have
5 taken place other than the fact that you went at the
6 request of Mr. H. ?

7 A: I don't understand what you're saying.

8 Q: Pardon me?

9 A: I said I don't understand what you're saying.

10 Q: Well, let's look at what I'm saying. I'm saying
11 that you indicated that at some point during the
12 night after you were out on this camping trip, Troy
13 Taylor came to your place where ever you were in the
14 sleeping bag and got you out of there. Put his
15 hands over your mouth and told you to be quiet.
16 Now, at that time, do you have any present
17 recollection now what you were thinking, did it
18 occur to you, what is this man up to?

19 A: Yeah.

20 Q: That occurred to you?

21 A: That was my recollection the entire time. Every
22 since it happened.

23 Q: And, of course, inasmuch as you were wondering what
24 was he up to you had a whole bunch of other boys
25 around there, did you not?

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1 A: I did.

2 Q: You had fellows all over the place.

3 A: I did.

4 Q: And you were wondering, well, what in the world is
5 he up to. And, of course, you said he put his hands
6 over your mouth and told you to be quiet, you had
7 fellows all over the place, at the same time you
8 said he picked you up and carried you. So, he must
9 have taken his hands from over your mouth.

10 A: No. Sir, I was not very big. I was 11 years old
11 and under 100 pounds. You can put somebodies hand
12 over somebody's mouth and grab them around the legs
13 and pick them up.

14 Q: All right. Tell us how he carried you.

15 A: Just like that.

16 Q: Put one hand around your mouth.

17 A: One like this (illustrating) and put one like that
18 (illustrating).

19 Q: And the entire time that you say that he ... well,
20 you admitted that you, at one point you didn't say
21 anything about any anal sex and you said that you
22 all were just fondling each other. Now, during the
23 time that you all were doing the fondling, where was
24 his hands then?

25 A: On me.

HEARING

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1 Q: On you?

2 A: Yes.

3 Q: You would agree, certainly then, that his hands were
4 removed from your mouth?

5 A: Sir. Yes, sir, they were.

6 Q: If, if you had just Troy's got me, everybody in the
7 camp would have jumped up, wouldn't they?

8 A: Yes, I suppose.

9 Q: Well, now you didn't want what you thought was about
10 to happen, I'm certain you didn't want that to
11 happen and you knew if you just said that, everybody
12 would be --- but you didn't do that, did you?

13 A: No, sir. I didn't.

14 Q: And the reason that you didn't do it is because it
15 didn't take place?

16 A: No. That's not what I said.

17 Q: Well, you said that Mr. Taylor took you and put you
18 in his bunk and kept you there all night.

19 A: I didn't say all night, sir.

20 Q: Well, how long did he keep you?

21 A: Until he was finished. I didn't have a watch on.

22 Q: Until he finished?

23 A: Yeah.

24 Q: Well, I thought you said he brought you and put you
25 close to him ...

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1 A: Under the tarp where everyone else was, sir.

2 Q: And, and he laid down and slept beside you until
3 morning?

4 A: Until the morning.

5 Q: And you wake up in front of everybody that morning,
6 in your bunk?

7 A: Not my bunk. There on the floor in a sleeping bag.

8 Q: Well, he woke up sleeping in your bag?

9 A: No, sir. I said I slept next to him.

10 Q: Well, I thought you said he had his own tent.

11 A: He did, but he didn't sleep in it. All our gear was
12 in there.

13 Q: So, he woke up in front of everybody, all those boys
14 there, he woke up with his tent over there and he
15 woke up in your tent or in your bunk?

16 A: Yes, sir.

17 Q: And all the other boys saw him waking up in your
18 bunk?

19 A: Yes, sir.

20 Q: That must have caused some kind of stir up.

21 Ms. Barr: Objection. Move to strike.

22 Q: Well, did the other boys ...

23 The Court: Sustain the objection.

24 Q: Were the other boys concerned about finding him in
25 your bunk that morning?

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1 A: No, sir.

2 Q: They didn't say a word?

3 A: No, sir.

4 Q: Now, all of these other boys that were there and saw
5 him wake up in your bunk, I know that at some point,
6 after you told all the investigators supposedly
7 about this, they got the --- the police was
8 concerned about some witnesses, weren't they?

9 A: Yes, sir.

10 Q: I mean, my goodness, you done told somebody that the
11 preacher at the church sodomized you, certainly I
12 know that they were very concerned about that,
13 weren't they?

14 A: Yes, sir.

15 Q: And they wanted to find out how in the world did he
16 do this and could they find anybody to substantiate
17 it give up the names of the witnesses. I know they
18 asked for it, didn't they?

19 A: Yes, sir.

20 Q: And I know you gave them the names, didn't you?

21 A: Yes, sir.

22 Q: So, now, if you gave them the names and they were
23 investigating, of course, you wouldn't know whether
24 or not they went and talk with anyone of those
25 people that saw him wake up in your bunk, do you?

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1 A: No, I don't know if they did, no, sir.

2 Q: But now you do know that you're in court today and
3 you know that there ain't one other soul going to
4 come to this court room and say what you just
5 testified to that jury that that happened that
6 night?

7 A: I'm very aware of that.

8 Q: You're aware of that?

9 A: Yes, sir.

10 Q: How many boys did you say, about 10 of them were
11 there?

12 A: I'd say between 6 and 7, yes, sir.

13 Q: And they all woke up and saw him in your bunk and
14 there ain't none of them going to come to court and
15 say, well, yeah, Mr. *VICTIM* is telling the truth?

16 A: No, sir, they're not.

17 Q: They were your friends?

18 A: They were. I don't have anything to do with them
19 anymore.

20 Q: Now, you - I believe in your June 1st statement you
21 said that this place where you went out in the woods
22 there were corn fields with two houses, is that
23 correct?

24 A: Yes, sir.

25 Q: On either side of the street. On either side of the

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1 street on Black River?

2 A: Yes, sir.

3 Q: Describe the streets that were on Black River where
4 you all had this camp site.

5 A: Off the main road to the right. Went down the
6 driveway. It was a gravel driveway. Houses on
7 either side of the driveway, you go pass the houses
8 and there is corn fields, go pass the corn fields
9 and you go on that's when the opening into the woods
10 is, trails, old hunting trail. You go back in there
11 and drove through there about a mile and back there,
12 back there on Black River is where we set up camp.

13 Q: So, then the street that you referred to, you really
14 didn't mean street as in the generic streets, like
15 streets out here in the road, you're talking about
16 just a trail? Is that it?

17 A: I wouldn't say a trail, some kind of woods.

18 Mr. Barr: Court's indulgence, Judge.

19 The Court: Okay.

20 Q: Mr. VICTIM, I've just got a few more questions and I
21 tell you what it relates to. The anal sex. Now, you
22 were, in 1998, you were 11 years old?

23 A: Yeah.

24 Q: And, you don't know how old Mr. Troy Taylor is, do
25 you?

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1 A: I know he's in his thirties, I believe, sir.

2 Q: A grown man. And I know that in terms of any kind
3 of sexual activity whether it was at the beach, at
4 his house or whether it was in the woods, in order
5 for him to penetrate your anal cavity, his penis
6 would have to be rather stiff, wouldn't it?

7 A: Yes, sir.

8 Q: And are you telling the ladies and gentlemen that on
9 the occasion in '98 that it was stiff?

10 A: Yes, sir.

11 Q: And stiff in --- in --- at the beach?

12 A: Yes, sir.

13 Q: And you're an 11 year old boy?

14 A: Yes, sir.

15 Q: Did you notice whether or not Mr. Taylor, did he
16 have any kind of lubrication or anything?

17 A: Not that I remember, sir.

18 Q: Not that you remember. Not that you remember. Now,
19 you, you told Miss --- you told the prosecutor that
20 when he penetrated you in your anal cavity you felt
21 pain?

22 A: Yes, sir.

23 Q: Now, of course, you would agree that you probably
24 never had anything to penetrate your anal cavity
25 before, did you?

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- 1 A: No, sir.
- 2 Q: And somehow in 1998, when you were in the woods, Mr.
- 3 Taylor, are you claiming that he just kind of got on
- 4 top of you and just somehow he found your anal
- 5 cavity and just popped his penis right in your anal
- 6 cavity?
- 7 A: Unfortunately, yeah.
- 8 Q: Flopped right in the first time?
- 9 A: I wouldn't say flopped right in there.
- 10 Q: Were you laying down or were you standing up in the
- 11 tent?
- 12 A: Laying down.
- 13 Q: Were you laying on your stomach, on your back? Of
- 14 course, if you were on your back, it would have been
- 15 difficult for him to hold your mouth. How were you?
- 16 A: I was laying down.
- 17 Q: How were you laying down?
- 18 A: Kind of on my side, on my stomach.
- 19 Q: Kind of on your side and on your stomach?
- 20 A: Yes, sir.
- 21 Q: And you were stretched out?
- 22 A: I wouldn't say stretched out.
- 23 Q: How were you?
- 24 A: I was just laying there.
- 25 Q: Just laying there. I mean, you weren't in a fetal

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1 position or anything like that, you were, did you
2 have your legs stretched out, did you have your
3 knees buckled?

4 A: No.

5 Q: And some how he was able to take his penis and enter
6 your anal cavity?

7 A: Yes, sir.

8 Q: And, of course, you didn't feel like you needed to
9 go to a doctor or anything after that?

10 A: What was I going to tell my parents I needed to go
11 to the doctor for?

12 Q: Well, tell them that the preacher had sodomized you.
13 I mean, it would seem to me. You said he didn't
14 have any kind of lubrication and somehow he managed
15 to get his penis inside of you.

16 A: Is that a question?

17 Q: Yes, sir. You didn't have a need to go to a doctor?

18 A: I probably should have, but I didn't.

19 Q: Probably should have done it?

20 A: Yeah.

21 Q: Probably if that would have happened, you probably
22 should of and would have told your mother or told
23 your father because that would seem to me that that
24 would be kind of hard to keep from telling somebody.
25 I know you didn't like it when that happened, did

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1 you?

2 A: No, sir, I didn't.

3 Q: And you didn't like it in 1999, when he, according
4 to you invited you to go back to his house to go
5 with just you and Mr. H. ?

6 A: Yes, sir.

7 Q: So, notwithstanding the fact that you didn't like it
8 in 1998 when you claim he did these things to you
9 that were so terrible that you knew it was wrong
10 that you went right back to his house again in 1999
11 and went in the shower?

12 A: Yes, sir.

13 Q: The same man?

14 A: Yes, sir.

15 Q: Now, did the thought occur to you, this man has
16 sexually abused me and if he gets another chance, he
17 might do it again? Did that thought occur to you.
18 You were another year old then, weren't you?

19 A: Yes.

20 Q: Did that thought occur to you?

21 A: No, sir. It didn't. Not specifically, no.

22 Q: You didn't even think about that?

23 A: No.

24 Q: But, of course, you still remember, according to you
25 that he had sexually molested you?

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- 1 A: Yes, sir.
- 2 Q: And you were very much aware of it at the time?
- 3 A: Yes, sir.
- 4 Q: And yet the thought never occurred to you that he
5 might do it again?
- 6 A: No, sir.
- 7 Q: You felt comfortable with him, you just got in his
8 car with him and rode back to his house, got in the
9 shower and selected to take your clothes off.
- 10 A: Yeah.
- 11 Q: Now, of course, when you saw him come in the shower
12 naked, you must of then said, look he might do it
13 again. I know it must have occurred to you then.
14 When he came in there getting in the shower naked
15 again with you it must have dawn on you that he
16 might do it again?
- 17 A: Yeah.
- 18 Q: And I know you said now is the time to get him. I
19 think I'll call his wife who is five or ten feet
20 away over there and we'll catch him.
- 21 A: It didn't occur to me to call her, no, sir.
- 22 Q: But you didn't do that?
- 23 A: No, sir.
- 24 Q: And Mr. *VICTIM*, you didn't do it because you had
25 nothing to fear because what you said about Mr.

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1 Taylor never happened.

2 A: No, sir. That's not what I said.

3 Q: Well, then you will agree that under those kind of
4 circumstances where a man has taken his penis, a
5 grown man, and had sex with you obviously with
6 force, it had to be forced, you said he had no kind
7 of lubrication and you'd never had any kind of anal
8 sex before.

9 A: No, sir.

10 Q: A virgin. That would be an experience that you
11 wouldn't have wanted to happen again, would it?

12 A: No.

13 Q: Now, you would agree that a man put in your position
14 and not to say anything when you see him coming in
15 there you would have certainly thought that he had
16 something on his mind, didn't you?

17 A: Are you saying do I now?

18 Q: Well, then. When you say he came in there naked you
19 say. You thought he had something - you didn't
20 think he had something on his, knowing what you
21 claim happened before?

22 A: No, sir. I trusted this man, sir. You have to
23 understand that.

24 Q: You trusted him but you claimed that he had already
25 sodomized you?

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1 A: Yes, sir.

2 Q: So, now, are you telling the ladies and gentlemen of
3 this jury that even though a year earlier he had
4 sodomized you, you still trusted him?

5 A: Yes, sir.

6 Q: It would be kind of unusual, wouldn't it?

7 A: Yes.

8 Q: Almost unbelievable.

9 A: I wouldn't say that.

10 Q: You wouldn't say that?

11 A: (No response).

12 Mr. Barr: Thank you, sir. Court's indulgence.

13 The Court: All right.

14 Mr. Barr: Mr. VICTIM, thank you, sir.

15 The Court: Ms. Barr, does the State have any
16 redirect?

17 Ms. Barr: We do, Your Honor.

18 The Court: All right.

19 VICTIM - REDIRECT BY MS. BARR:

20 Q: VICTIM, Mr. Barr asked you if a man put in your
21 position would have any idea that he would do that
22 to you a second time. You weren't a man back then
23 you were a what?

24 A: I was 11, 12.

25 Q: You were a child?

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- 1 A: Yes, ma'am.
- 2 Q: Now, when you went into his home with his wife
- 3 there, why didn't you believe that it might happen
- 4 again when you first went in there. What made you
- 5 feel comfortable that he wouldn't do that to you
- 6 again?
- 7 A: Because people could see.
- 8 Q: It was day night?
- 9 A: (Nods head affirmatively).
- 10 Q: I need you to answer verbally.
- 11 A: Yes, ma'am.
- 12 Q: And witnesses were there?
- 13 A: Yes, ma'am.
- 14 Q: You never thought he would do it to you that way?
- 15 A: No, ma'am.
- 16 Q: Now, when you gave your statements regarding these
- 17 two rapes, the first time you reported it was to
- 18 whom?
- 19 A: To Georgetown County.
- 20 Q: And the Defendant has marked an exhibit regarding
- 21 that statement and that was made - do you have a
- 22 copy of that with you?
- 23 A: No.
- 24 Q: Let me give you a copy of what I have. That
- 25 statement was made when?

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1 The Court: Can I see a copy?

2 A: Statement given June 1st 2005.

3 Q: And that statement specifically talks about the rape
4 that happened at the camp site here in Williamsburg
5 County, right?

6 A: Yes, ma'am. It does.

7 Q: All right. Now, you talked about how Georgetown
8 County first got the report and they didn't act on
9 it until they tried to do what?

10 A: They wanted to find out where it actually took
11 place. If it was in Georgetown County or
12 Williamsburg County.

13 Q: All right. That was what they were trying to figure
14 out for a period of time.

15 A: Yes, ma'am.

16 Q: And I'm assuming, based on your statements to Laura
17 Rogers in November of that year that they determined
18 that it happened in Williamsburg ...

19 Mr. Barr: Objection, Your Honor. She's leading
20 the witness.

21 Ms. Barr: Let me rephrase.

22 The Court: All right. It is redirect but that
23 does not permit you to lead so I'll sustain his
24 objection.

25 Ms. Barr: I understand.

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- 1 Q: If you gave a statement to Georgetown County in June
2 of 2005, why was it that you gave a another
3 statement to Williamsburg County six months later?
- 4 A: They asked me directly what happened. They actually
5 ask me questions about stuff.
- 6 Q: Okay. But why was it you started off with Georgetown
7 and ended up here in Williamsburg County, why was
8 that?
- 9 A: Because they found where the campsite was.
- 10 Q: It was here?
- 11 A: They found it was in Williamsburg County.
- 12 Q: So, it wasn't as if, if I understand it, was there
13 ever a concern that you waited for a long period of
14 time or what was the particular reason why you were
15 waiting for it to come here?
- 16 A: Because we didn't know the exact location.
- 17 Q: I understand. You indicated that they were not
18 asking you questions during your first statement to
19 Georgetown County. Is that right?
- 20 A: Yes, ma'am.
- 21 Q: Did they ask you to just write something?
- 22 A: Yes, ma'am.
- 23 Q: At some point, did it become more detailed?
- 24 A: Yes, ma'am.
- 25 Q: You talked about verbal statements?

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- 1 A: Yes, ma'am.
- 2 Q: Were the law enforcement officials there asking you
- 3 specific questions?
- 4 A: Yes, ma'am.
- 5 Q: And that's when it got more detailed?
- 6 A: Yes, ma'am.
- 7 Q: And in those questions you did report that it was
- 8 actual anal intercourse?
- 9 A: Yes, ma'am.
- 10 Q: And you talk about this first incident that happened
- 11 at the campsite here when the Defendant came and got
- 12 you out of the tent, what were the other boys doing?
- 13 A: Sleeping.
- 14 Q: When he got you out of the tent and took you to his
- 15 tent, is that when the actual rape occurred?
- 16 A: Yes, ma'am.
- 17 Q: Were there any witnesses to the actual rape itself,
- 18 other than you and other than the Defendant?
- 19 A: Not that I know of. No, ma'am.
- 20 Q: As far as you know none of the other boys came to
- 21 the other tent where you were?
- 22 A: No.
- 23 Q: When he got finished with you, where did he take
- 24 you?
- 25 A: Back to the tent with everyone else.

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1 Q: Were the boys asleep or awake when he took you back?

2 A: They were asleep.

3 Q: So unless they woke up, saw you and then went back
4 to sleep, they wouldn't have witnessed anything?

5 A: That's correct.

6 Q: And you're not in contact with any of these boys
7 now?

8 A: No, I'm not.

9 Ms. Barr: That's all I have, Your Honor.

10 The Court: Mr. Barr?

11 VICTIM - RECROSS BY MR. BARR:

12 Q: As I understand it, you told me on direct
13 examination exactly what you told the Georgetown
14 County officials as well as Ms. Rogers where you
15 went to get to this campsite, is that correct?

16 A: Yes, sir.

17 Q: Now, you have never been out to the campsite
18 subsequent to the time that you claim that you were
19 out there on the first occasion?

20 A: No, sir, I haven't.

21 Q: And you certainly don't know whether or not the
22 police ever found the campsite, do you?

23 A: I can't say yes.

24 Q: If you can't say yes, then the answer is no, isn't
25 it?

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- 1 A: Yes.
- 2 Q: All right, sir. Now, Ms. Laura Rogers, you at some
- 3 point did have some conversation with her?
- 4 A: Yes, sir. I did.
- 5 Q: But with respect to what you told her about the
- 6 campsite is nothing more that you told us today?
- 7 A: Yes.
- 8 Q: And you don't know if he ever went out to the
- 9 campsite or whether she's got any idea if the
- 10 campsite is in Horry County or Georgetown County?
- 11 A: We do know that it is in Williamsburg County.
- 12 Q: I'm asking you what you know, not we. Who is we? I
- 13 want to know what you know?
- 14 A: I do know now it is Williamsburg County.
- 15 Q: Do you know whether or not Laura Rogers went out
- 16 there to the campsite, to the same camp that you
- 17 went?
- 18 A: No, sir. I do not know that for sure.
- 19 Q: Then, would you not agree that with respect to where
- 20 ever she may have gone or anybody else, you don't
- 21 know whether they went to the same place that you
- 22 went to or not, do you?
- 23 A: No, sir. I don't.
- 24 Q: And you don't know whether you were in Williamsburg
- 25 County or Georgetown County at the campsite, do you?

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1 A: Yes, sir, I do.

2 Q: Didn't you testify yesterday under oath, right here
3 on this witness stand that you did not know?

4 A: At the time, I didn't but now I do know. Is that
5 what you're asking?

6 Q: No, sir. I'm asking you ...

7 A: At the time I did not know.

8 Q: I'm asking you whether or not have you ever been
9 back out to the campsite?

10 A: No, sir.

11 Q: So, now, if you've never been back to the campsite,
12 you didn't have a map?

13 A: No, sir.

14 Q: You don't know where the county lines are?

15 A: No, sir.

16 Q: Then what it is you think you know is something
17 somebody else has told you?

18 A: In other words, yes, sir.

19 Q: All right. Now, of course, you said that you, that
20 the other boys were asleep, but they weren't asleep
21 when you all woke up that morning and according to
22 you Troy Taylor was back under the tent where
23 everybody was, with you?

24 A: Yes, sir.

25 Q: Did he have his son with him?

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- 1 A: No, sir. He didn't.
- 2 Q: And his tent was just over there empty, nobody in
- 3 it?
- 4 A: No, sir. That's where a lot of the gear and stuff
- 5 was.
- 6 Q: Well, the gear was in his tent, but nobody was
- 7 sleeping over there?
- 8 A: No, sir.
- 9 Q: But when he had gone to sleep that night, he went to
- 10 sleep in his own tent?
- 11 A: No, he went to sleep under the tarp with everyone
- 12 else.
- 13 Q: I see. But just in a different area from where you
- 14 were?
- 15 A: No, sir. I was sleeping right next to him.
- 16 Q: Sitting next to him?
- 17 A: Sleeping next to him.
- 18 Q: Sleeping next to him. If you were sleeping right
- 19 next to him, he couldn't have possibly picked you up
- 20 and moved you. If you were sleeping right next to
- 21 him, he couldn't have possibly picked you up and
- 22 carried you anywhere?
- 23 A: Why couldn't he?
- 24 Q: Well, you said you were sleeping right next to him.
- 25 He didn't go back to his tent. He stayed under the

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1 tent where the boys were?

2 A: Yeah, but ...

3 Q: And you were sleeping right next to him.

4 Ms. Barr: Judge, let him finish his question,
5 please.

6 Mr. Barr: I have no further questions.

7 The Court: Any additional questions, Ms. Barr?

8 Ms. Barr: Judge, I just want to ask the
9 witness, actually did give him an opportunity to say his
10 answer in completion.

11 The Court: All right. You can restate the
12 question to the extent that you think that can be
13 accomplished.

14 REDIRECT BY MS. BARR:

15 Q: *VICTIM* the last question Mr. Barr asked you is how
16 was it possible that the Defendant was next to you
17 and where the actual assault occurred. Please tell
18 the jury and finish your responses to where the
19 assault occurred and how you were taken.

20 A: When I went to sleep Mr. Taylor was sleeping right
21 next to me. He woke me up and picked me up, put his
22 hand over my mouth and took me to his tent,
23 sodomized me, brought me back to the same places we
24 were.

25 Ms. Barr: Thank you, sir.

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1 The Court: All right. You can step down. Can
2 the lawyers come up for just a minute.

3 (Counsel approach)

4 The Court: All right. Ladies and Gentlemen. I
5 was just speaking with the lawyers about scheduling and I
6 think now is a good time for a lunch break. It's 12:22
7 according to that back clock and my watch is broke so I
8 don't have any clue whether that clock is right or not.
9 Just look at the back wall clock compare it to your watch
10 and be back in your jury room at 2:00. You have a hour
11 and some odd minutes for lunch. Please do not discuss
12 the case. Again, as I indicated to you earlier that
13 would be inappropriate at this stage. You have not
14 heard all the evidence and you have certainly not heard
15 the arguments of counsel and the charges on the law. So,
16 please do not discuss the case with each other or with
17 anyone else and do not begin to form any opinions in your
18 own mind. Thank you very much.

19 (Jury dismissed for lunch break (12:25))

20 (Jury in 2:00 p.m.)

21 THE COURT: All right, ladies and gentlemen, we're
22 ready to complete the trial. I trust you had a nice
23 lunch. We'll move forward the remainder of the
24 afternoon. We're still proceeding with the Defendant's,
25 excuse me, the State's presentation of evidence. Ms.

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1 Barr, you can call your next witness.

2 MS. BARR: The State calls Sergeant Laura Rogers.
3 (Witness is sworn).

4 SERGEANT LAURA ROGERS - EXAMINATION BY MS. BARR:

5 Q. Sergeant Rogers, let me get you to state your full
6 name for us.

7 A. Laura B. Rogers.

8 Q. Ms. Rogers, tell me where you're employed.

9 A. Williamsburg County Sheriff's Office.

10 Q. What is it that you do for Williamsburg County
11 Sheriff's Office?

12 A. I'm the victim's advocate for the Sheriff's
13 Department.

14 Q. Now, are you a certified law enforcement officer?

15 A. I am.

16 Q. How long have you been in law enforcement?

17 A. Since May of 1996.

18 Q. May of 1996?

19 A. Yes.

20 Q. Then, what, 11 years?

21 A. Yes.

22 Q. And have you been with the sheriff's department
23 during that entire time?

24 A. Yes.

25 Q. All right. Now, have you grown up -- do you live

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1 here in Williamsburg County?

2 A. I do.

3 Q. Okay. How long have you lived in Williamsburg
4 County?

5 A. Really all of my life.

6 Q. All your life? I'm not going to ask you how old you
7 are.

8 A. Okay.

9 Q. Now, tell me -- you indicated that you're a victim
10 witness advocate for the sheriff's department.

11 A. Yes.

12 Q. Now, explain to the jurors what that means.

13 A. Well, it's -- my job is just to advise crime victims
14 about resources that are available to them -- to them
15 through the State Office of Victim's Assistance as in
16 medical assistance or some type of monies that are
17 available to help them to take care of things that --
18 that has happened to them as a result of the crime, I
19 also do referrals in regards to -- to other agencies like
20 people, which is the Department of Social Services for
21 crime victims. And I also do transports when we have a
22 victim or child victims of sexual assaults and direct or
23 physical assaults. I do the transfers for the Durant
24 Children's Center as needed.

25 Q. Okay. Now, we had someone explain earlier that the

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1 Durant Center is a facility in Florence.

2 A. It is.

3 Q. And they conduct interviews of children who have
4 alleged that they were victimized by sexual or physical
5 abuse.

6 A. They do.

7 Q. Okay. Now, and you will typically, if necessary,
8 provide transport for the child or the child's parents
9 for that purpose; is that correct?

10 A. Yes.

11 Q. All right. Are there other neighboring counties in
12 which you take them to other than Florence?

13 A. Sometimes -- there is a place in Georgetown ---

14 Q. Okay.

15 A. --- called the Children's Center. I've also gone to
16 Charleston.

17 Q. Okay. All right. Now, when did you actually meet
18 **VICTIM** with regard to this particular case?

19 A. He came to our office November the 23rd, 2005.

20 Q. Okay. At that time, he would've been what age, if
21 you recall?

22 A. 18.

23 Q. 18 years old?

24 A. Yes.

25 Q. Did his age come into play at all in whether or not

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1 he was referred to and transported by you to the Durant
2 Center?

3 A. They don't -- to my understanding, they only do
4 services for victims under the age of 18, or 17.

5 Q. All right. Now, of course I can't get into what all
6 he said to you, but he made a complaint about an abusive,
7 is that correct?

8 A. That's right.

9 Q. And do you know where he was coming from?

10 A. Yes.

11 Q. Okay. All right. Now, did you ever receive any
12 type of information regarding this complaint from the
13 Georgetown County Sheriff's Office?

14 A. I --

15 MR. BARR: Objection. Your Honor, I think that she
16 can answer, can say that she received it, but she can't
17 say what it was.

18 THE COURT: I think she can testify to what she did
19 as a result of any communication she had. Anything else
20 would be hearsay. Well, go ahead, Ms. Barr, with that --
21 with that instruction.

22 Q. Please continue, ma'am.

23 A. I -- I had a copy of the voluntary statement that
24 was given by VICTIM regarding the incident that
25 happened in -- at Black River.

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1 Q. All right. So you had copies of statements that --
2 that : **VICTIM** gave to who?

3 A. Georgetown County.

4 Q. Okay, Georgetown County faxed those statements to
5 you?

6 A. I'm trying to remember if it faxed to me or what ---

7 Q. Okay.

8 A. I'm not sure.

9 Q. But you received them from Georgetown County, okay.
10 Now, as part of your receiving the official complaint and
11 copies of the statement and so forth regarding the
12 incident that happened near Black River, did you also
13 have **VICTIM** write out a statement for purposes of the
14 Williamsburg County Sheriff's Department?

15 A. I did.

16 Q. Okay. And that statement was given in November
17 2005?

18 A. Yes.

19 Q. Okay. Now, what was your understanding as to the
20 delay between the statement given by **VICTIM** to Georgetown
21 County in June of '05 to the point in time where he gave
22 the statement to you here in Williamsburg County in
23 November of '05?

24 A. To my understanding, they couldn't determine where
25 the event actually took place, whether it was in our

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1 county -- in our county on this side of Andrews or ---

2 MR. BARR: Judge, I'm objecting because this is
3 hearsay.

4 THE COURT: Counsel, come on over here for just a
5 second?

6 MS. BARR: Sure.

7 THE COURT: Ms. Barr, you can continue with your
8 questioning. And of course, I'm going to overrule the
9 objection as to -- I'm going to overrule Mr. Barr's
10 objection. But I want you to please stick to the facts
11 at hand. And I think you've done that. But I want to
12 make sure that the witness doesn't get too far in regard
13 to the hearsay insofar as Georgetown County authorities
14 are concerned.

15 MS. BARR: Yes, sir. Thank you.

16 THE COURT: Think the witness can testify on what she
17 did as a result of any communication but stay away from
18 any hearsay.

19 A. I understand.

20 Q. In addition to speaking -- well, in addition to
21 getting a statement, a written statement, from VICTIM

22 , did you also talk with him and did he give you a
23 statement orally?

24 A. Yes.

25 Q. Okay. And in that statement, did he indicate to you

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1 any time frame in which the assault occurred?

2 A. He did.

3 Q. What about the place at which the assault occurred?

4 MR. BARR: Objection. May we approach the bench,
5 Your Honor?

6 (Off the record bench conference).

7 THE COURT: Yes, sir. I'm going to ask you to step
8 to the jury room, please. You will not be in the jury
9 room long. However, when the bailiff comes to get you,
10 if you have not had sufficient time to take whatever
11 break you'd like to take, you let them know. Do not
12 discuss the case.

13 (Jury retires to jury room).

14 THE COURT: --- made any verbal statements as far as
15 the time frame of the incident and the whereabouts of the
16 incident concerned Mr. Barr, objected. We had a bench
17 conference. Mr. Barr, if you would put on record so it's
18 clear as to what your objection is ---

19 MR. BARR: Your Honor, please the Court, first of
20 all, we would consider any testimony concerning either
21 one of those issues a violation of Rule 5. I
22 specifically, in our Rule 5 request, requested that we be
23 provided with -- with the substance of any oral
24 statements. We have -- we were provided with a number of
25 statements, and all of which -- which I have. In

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1 addition, I specifically asked Mr. *VICTIM* on the
2 witness stand what, if any, information that he gave to -
3 - and I specifically asked him about Officer Rogers -- to
4 Officer Rogers concerning the location and the time -- or
5 the location of where this incident supposedly took
6 place. And he told me not only during cross examination
7 in the case in chief but also when we did the -- the
8 motion hearing ---

9 THE COURT: Yes, sir.

10 MR. BARR: --- that he specifically said that he was
11 coming in on Highway 521 and he know it was on Black
12 River some place. But he did not know what county he was
13 in.

14 THE COURT: Is 521 in -- I don't know if there was
15 another specific highway or ---

16 MR. BARR: He said 17-A the first day. And 17-A goes
17 -- goes -- runs back to Charleston.

18 THE COURT: Okay.

19 MR. BARR: Off 521 in Georgetown.

20 THE COURT: Okay. So your objection -- if not for --
21 if there was not a Rule 5 problem, would you agree that
22 the witness could testify as to time and place as
23 expressed by the victim?

24 MR. BARR: Well, Judge ---

25 THE COURT: Under Rule 801.

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1 MR. BARR: Well, I -- I don't see how she could
2 testify to any time and place expressed by the victim.
3 That would constitute a statement by the victim. And --
4 and as I said, I -- I don't have any such statement from
5 the victim.

6 THE COURT: All right. But if -- let's say, for
7 example, that he had given a verbal statement to this
8 witness and the existence of that verbal statement in its
9 entirety had been made known to you during the Rule 5
10 production. All right. It would be admissible then,
11 wouldn't, as to time and place, because Rule 801 says ---

12 MR. BARR: If it had been given to me ...

13 THE COURT: 80 -- okay. All right. Ms. Barr, why
14 don't we do this. Ask the witness the question again.
15 Let's see what her answer is. Because I want to know
16 what the answer is.

17 Q. Sergeant Rogers, in addition to handwritten
18 statement that you'd taken from *VICTIM*, did you also
19 review a handwritten statement that was given by *VICTIM*
20 to the Georgetown County Sheriff's Department?

21 A. Yes.

22 Q. And in addition to those two statements, did you
23 also take oral statements from *VICTIM* as well?

24 A. Yes.

25 Q. Okay. And in those written statements as well as

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1 those oral statements, did Mr. *VICTIM* indicate to you the
2 time frame in which the crime occurred as well as the
3 place?

4 A. Yes.

5 Q. Okay. Did you follow those directions to try to
6 determine the location of the incident?

7 A. Yes.

8 Q. Okay. When you followed those directions to
9 determine the location of the incident, did the
10 landmarks, if you will, houses and corn fields that he
11 talked about, were you able to find that particular
12 location consistent with the directions he gave you?

13 A. I...

14 Q. And is that location in Williamsburg County?

15 A. It is.

16 THE COURT: All right. Let's ask the immediate
17 question. What was the verbal statement?

18 MR. BARR: That's the immediate question.

19 THE COURT: All right. What was the verbal
20 statement, Sergeant Rogers?

21 A. The verbal statement was that the incident happened
22 on -- on November the 6th ---

23 Q. Of what year?

24 A. On November the 6th, 1998.

25 THE COURT: Speak up just a tad.

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1 A. November the 6th, 1998,

2 THE COURT: All right. How about any directions or
3 whereabouts?

4 A. That is was near Black River and the Andrews area of
5 Williamsburg County off of Highway 521.

6 THE COURT: All right. That was the extent of the
7 verbal statement as to whereabouts. Mr. Barr, do you
8 have an objection to the statement as to the time?

9 MR. BARR: Judge, I have no objection as to the time.
10 What I do have objection to is that the prosecution --
11 what the -- and really, it amounts to misconduct. This
12 witness along with every other witness heard Mr. *VICTIM*
13 get on that witness stand and testify that he don't know
14 what county he was in. Now this witness comes up and
15 say, Mr. *VICTIM* told me he was in Williamsburg County.
16 And, Judge, that's just -- and aside -- but the problem
17 is, see, I don't have the statement. And that's why I
18 can't -- if I had it, quite frankly, I don't think the
19 statement exists. I don't think it ever exist. And
20 that's the problem with it, and that's why we've got Rule
21 5.

22 THE COURT: Ms. Barr?

23 MS. BARR: Your Honor, I am locating now my Rule 5
24 disclosure that was given to the Defendant's then
25 counsel, Scott Joy. Apparently, Mr. Barr come in at some

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1 point after the discovery process was taken place. I
2 don't know if Scott gave him everything that he had in
3 his possession. But obviously, Judge, the two written
4 statements are in counsel's possession, one of which he
5 admitted into evidence or at least had marked as a
6 Court's Exhibit.

7 THE COURT: That talks about the corn fields going
8 down ---

9 MS. BARR: That's correct, Judge. That's absolutely
10 correct. And in addition, Judge, he got a copy of the
11 incident report that says everything that she just
12 testified to. So for him to come up here now and say
13 that he didn't know anything about this, that's not true.

14 MR. BARR: Your Honor, the ---

15 MS. BARR: That's absolutely not true.

16 MR. BARR: -- the incident report -- there's an
17 incident report that's written by this young lady. I've
18 been very carefully ---

19 MS. BARR: He can -- he can ---

20 THE COURT: Wait, wait. One person at a time.

21 MR. BARR: I've been very careful throughout the
22 course of this trial to look for that particular
23 information, and so far we hadn't gotten it. Now, this
24 witness -- and I asked Mr. VICTIM specifically: what did
25 you tell any officer from Williamsburg County or -- and I

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1 specifically asked him about Officer Rogers. I was
2 standing right here. And he said, I told her that I was
3 on my way coming towards Andrews on Highway 521. We went
4 to -- we went to a location somewhere on Black River.
5 But now, and I asked him and he, point blank, he said, I
6 don't know what county I was in. He said it more than
7 one time.

8 THE COURT: Well, he also said at one point, and
9 maybe more than once, that he did know -- he did know
10 that it was in Williamsburg County.

11 MR. BARR: Well, but ---

12 THE COURT: I don't know how he came by that
13 knowledge, but that's what he said.

14 MR. BARR: Well, I questioned him on cross
15 examination. I said, are you saying what somebody else
16 told you, or do you know it for yourself? And he
17 admitted that he was repeating what somebody else has
18 said. But he didn't know it of his own knowledge.

19 THE COURT: Well, for me to -- for me to determine
20 whether or not there's -- the Rule 5 responses were --
21 fell short or whether or not you were otherwise notified
22 verbal statements or, to get to the point, if the
23 Sergeant's ability to get to the alleged location was
24 accomplished by the written statements from Georgetown or
25 Williamsburg or wherever, but she got ---

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1 MR. BARR: Yes, sir.

2 THE COURT: --- got there, then aren't we talking
3 about a moot point?

4 MR. BARR: No, sir. Judge, there's nothing --
5 there's nothing in the written statements that would've
6 been -- could've possibly enabled the Sergeant to get to
7 any specific location such as having been described by
8 Mr. *VICTIM* because it's not in there. It's not in either
9 one.

10 THE COURT: And that's what I'm saying. I don't
11 know. The only thing that I've glanced at is the
12 Georgetown County statement marked for ID. I've not --
13 excuse me ---

14 MR. BARR: Yes, sir.

15 THE COURT: --- Georgetown County statement dated
16 June 1, 2005. I've not seen any other written
17 statements. Would that -- you're saying that that
18 doesn't have any ---

19 MR. BARR: No, sir. It doesn't. I've got both
20 statements.

21 THE COURT: I -- I'd like to see them. Ms. Barr,
22 have you found the Rule 5 responses?

23 MS. BARR: I did, Your Honor. They were served on
24 September the 7th of 2006.

25 THE COURT: All right. Can I see those?

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1 MS. BARR: Absolutely.

2 THE COURT: All right. The June 1, 2005 statement's
3 already been marked for ID. It states in pertinent part:
4 my friend Charles H asked me if I want to go. We
5 went back in the woods about a mile and a half. There
6 were corn fields all around with two houses on either
7 side of the street. That, I believe, sets forth the
8 whereabouts as far as this statement's concerned.
9 Voluntary statement dated November 23, 2005, later at the
10 Williamsburg County Sheriff's Office says, the church --
11 I can't read that next word -- had a youth camping trip
12 on Friday in November 1998. We left around four o'clock
13 or so. It was pretty cold. We left to go towards
14 Andrews. Arrived around six or 6:30. It was dark
15 outside. The youth got to this campsite on Black River.
16 After we arrived, we made a big bonfire and set up camp.
17 All right, and that is the extent of whereabouts in that
18 statement. All right.

19 MS. BARR: Your Honor, if I may.

20 THE COURT: Yes, ma'am?

21 MS. BARR: Judge, again, we had this -- first of all,
22 the officer is not testifying as to what the Defendant or
23 what the victim told her in terms of directions. She's
24 testifying as to what she did as a result of that
25 conversation with the victim. So it doesn't fall within

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1 any hearsay, and it's not violating the Rule 5. In
2 addition, Judge, this is what Mr. Barr seems to forget:
3 just because you request something doesn't in and of
4 itself make it incumbent on the prosecution to produce it
5 pursuant to Rule 5. I'm looking at Rule 5, and I
6 certainly don't see any directive on the part of State to
7 produce oral statements of victims. Now, he asked for
8 the NCIC of jurors under Rule 5. The case law was clear
9 that unless it's covered by rule or statute, we're not
10 compelled to disclose it. So all this -- this argument
11 is moot.

12 THE COURT: All right, Mr. Barr, does the Rule 5
13 require them to produce statements of the Defendant?

14 MS. BARR: Of the Defendant ---

15 MR. BARR: Judge, excuse me. Not only did we file a
16 motion under Rule 5. Judge, in all fairness, under
17 Brady. And we certainly filed a motion under Brady under
18 our Rule 5 requesting that we be provided with
19 information that would be helpful to the Defense. Now,
20 an issue such as this, clearly it would be helpful to the
21 Defense. And, Judge, the thing about it is, as I said, I
22 genuinely believe that this alleged oral statement has
23 never existed and that's the reason why we were not
24 provided with it. Otherwise I think we would've been
25 provided with it. But the only person that knows about

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1 the statement is this officer. The person who allegedly
2 made the statement has indicated that he didn't make it.
3

4 THE COURT: All right. Mr. Barr, I think your
5 argument's preserved. I'm going to overrule your
6 objection. You can certainly cross examine the witness
7 of varying factors on that point. I'm going to allow the
8 witness to testify to the verbal statement. And of
9 course that credibility of whether or not that statement
10 was made will rise and fall based on what Mr. VICTIM said
11 out of his own mouth, that he didn't make any such
12 statement. I'll let the jury resolve that issue. All
13 right, ready for the jury, Ms. Barr and Mr. Barr?
14

15 MS. BARR: State's ready, Judge.

16 THE COURT: All right. We need to make the Rule 5 --
17 I don't have your actual Rule 5 request. All I've got is
18 State of South Carolina produces the following material
19 pursuant to Rule 5. I don't have the actual request. If
20 y'all want to leave these out, we can make those Court's
21 Exhibits as well at some point. I just don't want that
22 to get ...

23 MS. BARR: I think I've got the one from Mr. Joy that
24 I responded to.

25 THE COURT: All right. Mr. Barr, did you file one of
our own?

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1 MR. BARR: Yes, sir.

2 THE COURT: You did?

3 MR. BARR: Yes, sir.

4
5 MS. BARR: We're going to need to make a copy of this

6 ---

7 COURT REPORTER: Court's Exhibit Number 3.

8 (Whereupon, Rule 5 Request as filed by Scott Joy, is
9 marked as Court's Exhibit Number 3 for identification).

10 MS. BARR: Your Honor, this is Court's Exhibit Number
11 3, I believe. It's the Rule 5 Request filed by Scott
12 Joy.

13 THE COURT: Court's Exhibit 3 then will include the
14 State's responses dated August 23, 2006. And Mr. Barr,
15 if you have any additional ones of your own ---

16 MR. BARR: Judge, I've got them. I just -- I just
17 need to find them, please. If I recall, the response to
18 our Rule 5, Ms. Barr referred me back to the material
19 that she had already produced to Scott Joy.

20 THE COURT: All right. Rule 5 requires disclosure of
21 evidence by the prosecution. Information subject to
22 disclosure is the statement of the Defendant does apply
23 here. Defendant's prior record, which does not apply to
24 the issue at hand. Documents and tangible objects and
25 would not -- and the terminology used in paragraphs that

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1 refer to verbal statements also requires disclosure of
2 reports and examinations and tests. And then it gets to
3 the point of information not subject to disclosure. But
4 basically Rule 5 doesn't reference verbal statements, and
5 that's why probably a law at its --- doesn't reduce such
6 statements to writing. And that's certainly ample
7 grounds for Mr. Barr to cross examine. If you want to
8 make your request part of the record at some other time,
9 Mr. Barr ---

10 MR. BARR: Judge, I'll do that.

11 THE COURT: All right. Otherwise, are we ready for
12 the jury, Ms. Barr?

13 MS. BARR: Yes, sir.

14 THE COURT: Mr. Barr?

15 MR. BARR: Yes, sir.

16 THE COURT: All right. Bring them in.
17 (Jury enters the courtroom).

18 THE COURT: All right. Thank you very much, ladies
19 and gentlemen. Ms. Barr, you can continue questioning
20 the witness.

21 MS. BARR: Thank you, Your Honor.

22 DIRECT EXAMINATION BY MS. BARR RESUMES:

23 Q. Sergeant Rogers, when we last spoke in front of the
24 jury, I was asking you questions about whether or not you
25 received a copy of a handwritten statement by VICTIM

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1 to the Georgetown County Sheriff's Office.

2 A. I did.

3 Q. All right. Did you also have him handwrite a
4 statement to the Williamsburg County Sheriff's Office
5 regarding the incident that happened in November of 1998?

6 A. I did.

7 Q. In addition, did you take a oral statement or a
8 verbal statement from him regarding the incident that
9 happened in 1998?

10 A. Yes.

11 Q. Now, those statements regarding the time in which
12 the crime occurred?

13 A. Yes.

14 Q. Did they also include the place in which the crime
15 occurred?

16 A. Yes.

17 Q. As a result of that conversation and the two
18 handwritten statements of *VICTIM*, where did that
19 lead you in terms of where the incident occurred?

20 A. In Williamsburg County.

21 Q. Is there any doubt in your mind that it occurred in
22 Williamsburg County?

23 A. No.

24 Q. Now, did you see certain landmarks or certain areas
25 near where the incident occurred and you actually saw and

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1 went out to the incident location?

2 A. I did.

3 Q. Now, Mr. VICTIM talks something about corn fields I
4 believe. Did you see any indication of that?

5 A. I did.

6 Q. What about houses on either side?

7 A. I did.

8 Q. Is that what you'd call deep in Williamsburg County?

9 A. Very.

10 Q. Now, when you took this initial report from VICTIM
11 how old was Mr. Taylor at the time that the report was
12 made?

13 A. Thirty ...

14 Q. What was his birth date at that time? What was his
15 date of birth, I'm sorry?

16 A. November the 3rd, 1969.

17 Q. 1969?

18 A. Yes.

19 Q. So this happened in November of 1998. He would've
20 been 29, 30?

21 A. 29.

22 Q. And VICTIM was how old in November of 1998?

23 A. 11.

24 Q. Thank you, ma'am. Please answer any questions
25 Defense counsel may have.

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1 THE COURT: Mr. Barr?

2 CROSS EXAMINATION BY MR. BARR:

3 Q. Ms. Rogers, this oral statement that you claim today
4 that you got from Mr. VICTIM concerning the location
5 as to where this incident occurred ---

6 A. Yes.

7 Q. How long you say you've been a police officer?

8 A. 11 years.

9 Q. 11 years?

10 A. Yes.

11 Q. And are you taught as a part of your training during
12 the course of your investigation to take notes?

13 A. I did.

14 Q. And are you taught to reduce these notes to an
15 incident report?

16 A. I did.

17 Q. Now wouldn't it be fair to say that, with respect to
18 this information that you claim Mr. VICTIM related to you
19 orally, it's the kind of information that you would've
20 wanted to reduce to a written record?

21 A. I did.

22 Q. And you've reduced it to a written record?

23 A. In my incident report.

24 Q. Pardon me?

25 A. In my incident report.

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1 Q. Do you have a copy of your incident report?

2 A. I do.

3 Q. Pardon me?

4 A. Yes.

5 Q. Now, is it the same report that's dated -- is it the
6 same reports that dated November 23rd, 2005?

7 A. Yes, sir.

8 Q. Now ---

9 MR. BARR: Defense, for identification only, Defense
10 4 -- 3.

11 COURT REPORTER: Defendant's 3.

12 MR. BARR: Defense.

13 COURT REPORTER: Oh, you want it ---

14 MR. BARR: I just want to mark it for identification.
15 (Whereupon, Defendant's 3 was marked for identification
16 purposes)

17 THE COURT: What number is that?

18 COURT REPORTER: It'd be Defendant's 3.

19 THE COURT: All right.

20 Q. Now, I show you now what's been marked for
21 identification purposes as Defendant's Exhibit Number 3.
22 Now, is that a copy of the incident report that you
23 produced and prepared in response to the information Mr.
24 VICTIM gave you concerning the location of the -- where
25 he claimed this incident occurred?

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1 A. Yes.

2 Q. Now, if you would, please, ma'am, were you in the
3 courtroom yesterday and today? I believe you were seated
4 right here when you heard -- or did you hear **VICTIM**
5 tell me that he did not know what county he was in?

6 A. At the time, yes.

7 Q. And did you hear him also me ask him exactly what
8 information at all that he related to either the
9 Georgetown County deputies or the Williamsburg County
10 deputies concerning how he got to where he was? Did you
11 hear me ask him that question?

12 A. I did.

13 Q. Did you hear his response?

14 A. I did.

15 Q. What was his response?

16 A. He didn't know at the time.

17 Q. Pardon me?

18 A. He didn't know at the time.

19 Q. He didn't know.

20 A. Yes.

21 Q. But now somehow, even though he didn't know at the
22 time and don't know now, do you recall him saying
23 something about traveling along Highway 521?

24 A. I do.

25 Q. Going towards Andrews?

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1 A. And he...

2 Q. And he said that's the only information that he gave
3 you.

4 A. Yes.

5 Q. But now today you say that you've got another oral
6 report from Mr. VICTIM whereby he gave you some
7 additional directions?

8 A. No, that he was in the --- Black River and Andrews,
9 and then he was up in Williamsburg County.

10 Q. Now, on Black River ---

11 A. Yes, sir.

12 Q. Now, do you know where the Williamsburg County line
13 runs between Andrews and Georgetown -- or between
14 Williamsburg County and Georgetown County?

15 A. I do.

16 Q. And if you would, please, ma'am, on Black River,
17 tell me the point at which the Williamsburg County line
18 crosses Black River.

19 A. Well ...

20 Q. I want to know where on Black River ---

21 A. Right.

22 Q. --- does Williamsburg County line cross -- separate
23 the Georgetown County from Williamsburg.

24 A. Okay. He said -- he told me that it happened in
25 Andrews on the Williamsburg County side.

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1 Q. On the Williamsburg County side -- well ---

2 A. --- Black River. He ---

3 Q. --- he said -- he said -- you just said that he said
4 he didn't know what county he was in.

5 A. At the time, he didn't know. He said he didn't
6 know. That's -- that was one of the reasons it took him
7 long to come to Williamsburg County, because they wasn't
8 sure whether it was in Georgetown County or Williamsburg.

9 Q. Did you ever -- did you ever take *VICTIM* out to
10 the location and ask him to show you where he claimed
11 that this incident occurred?

12 A. I did not.

13 Q. You did not?

14 A. No, sir.

15 Q. Now, let me ask you this question. Be very careful,
16 please, ma'am.

17 A. Uh-huh.

18 Q. Do you know for a fact that wherever location you
19 went to was the location that *VICTIM* claimed that
20 this incident took place in 1998?

21 A. Say that again now.

22 Q. Do you know for a fact ---

23 A. Uh-huh.

24 Q. --- that the location you went to was the exact
25 location that *VICTIM* claimed that this incident

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1 occurred in?

2 A. It was familiar to what he had explained.

3 Q. It was familiar to what he explained?

4 A. Yes.

5 Q. Now, you know Black River from Georgetown County to
6 Williamsburg County, in fact all the way from the
7 brackish water goes into Georgetown. It's very familiar
8 coming back to Williamsburg County where all kind of land
9 is on Black River. And a whole lot of them look familiar
10 and a lot of them look alike -- alike. Don't you agree?

11 A. Yes.

12 Q. Now, the fact of the matter is, whatever location
13 you went to on Black River, you don't know today and you
14 don't know the day you went, if you went, whether or not
15 it's the place where VICTIM claimed that this
16 incident took place, do you?

17 A. Well, to my understanding ---

18 Q. Do you know?

19 A. I wasn't there. No, I don't know.

20 Q. Thank you, ma'am.

21 THE COURT: Re-direct?

22 RE-DIRECT EXAMINATION BY MS. BARR:

23 Q. Sergeant Rogers, when we talk about he didn't know
24 at the time, what do you mean when you say at the time?
25 What time are you talking about?

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1 A. To my understanding, he didn't know at the time that
2 the incident occurred ---

3 Q. The time he was raped?

4 A. Exactly.

5 Q. He was --- he was ...

6 A. Right.

7 Q. You followed his directions?

8 A. I did.

9 Q. The place that you ended up was where?

10 A. In Williamsburg County.

11 Q. Thank you, ma'am.

12 RE-CROSS EXAMINATION BY MR. BARR:

13 Q. Do you know today? Can you take me today, without a
14 cert-- without a doubt, to the location on Black River
15 where this event supposedly took place that VICTIM
16 described you of ---

17 MS. BARR: Asked and answered. Objection.

18 THE COURT: Overruled.

19 A. I can take you to the familiar place that I had gone
20 to ---

21 Q. And that familiar place that you went to, you don't
22 know whether or not it's where VICTIM claimed that
23 this incident occurred, do you?

24 A. To my understanding, it's where he said it occurred.

25 Q. Do you know is what that ---

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1 A. --- no, I wasn't there.

2 Q. And you never took him out there to verify that
3 that's where it occurred?

4 MS. BARR: Asked and answered, Judge.

5 THE COURT: Sustained.

6 MR. BARR: What was the objection, Judge?

7 MS. BARR: Asked and answered.

8 THE COURT: You asked -- well ---

9 MS. BARR: Sorry, Judge.

10 THE COURT: She -- you asked her again if she ever
11 took VICTIM out there. She objected to that as
12 being asked and answered, and I sustained it.

13 Q. Now, would you not agree that, with respect to this
14 location, based on everything you know -- you were the
15 chief investigator on this file, right?

16 A. Yes.

17 Q. VICTIM was in a better position to know exactly
18 where the location was than anybody.

19 A. Yes.

20 Q. Now, Miss, just -- I just got a few more questions.
21 When you went to the location that you went to, did you
22 take a map?

23 A. I did not.

24 MS. BARR: Objection, Judge. Falls out of the scope
25 of re-cross.

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1 THE COURT: All right, Mr. Barr, what was the
2 question again?

3 MR. BARR: I just asked her whether when she went to
4 the location did she take a county map.

5 THE COURT: Well, how is that in response to
6 questions asked on re-direct by Ms. Barr?

7 MR. BARR: Judge, quite frankly I forgot what Ms.
8 Barr question -- what Ms. Barr's question was.

9 THE COURT: She asked the witness follow-up questions
10 in response to your cross about the terminology used by
11 Mr. VICTIM at the time, whether or not he knew where --
12 what county he was in at the time. And the witness
13 testified that, at the time, he meant 1998. So I'll
14 sustain ---

15 MR. BARR: Now, Mr. ---

16 THE COURT: I'll sustain that objection.

17 Q. Now, Mr. VICTIM hadn't given you any additional
18 instruction since 1998, has he?

19 A. What do you mean? Well, he filed a report ---

20 Q. Since he filed the report, he's not given you any
21 additional instructions concerning the whereabouts of - I
22 mean, where he was?

23 A. No.

24 Q. Now, when you found the spot where you believe Mr.
25 VICTIM was, do you know whether you were in Williamsburg

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1 County or Georgetown County?

2 A. I was in Williamsburg County.

3 Q. But you don't know whether or not that spot was in
4 fact where Mr. VICTIM was?

5 MS. BARR: Objection, Judge. Asked and answered.

6 THE COURT: Okay. All right, ma'am, you can step
7 down. Are you finished, Mr. Barr?

8 MR. BARR: Yes, sir.

9 THE COURT: All right, you can step down. Thank you,
10 ma'am. All right, the State can call its next witness.
11 Is everybody in the jury okay? If you need to take a
12 break, just raise your right hand. Or raise your left
13 hand. All right. Thank you. Ms. Barr, you can proceed.

14 MS. BARR: Your Honor, at this time, the State
15 respectfully rests its case.

16 THE COURT: All right. All right, ladies and
17 gentlemen, have to take a break now anyway because this
18 rule book that I spoke about requires us to take a break
19 at this point. So I'm going to ask you to go to your
20 jury room and keep in mind that you are not to discuss
21 the case at this time. Do not begin to form any opinions
22 in your own mind about any of the evidence or any
23 conclusions that you would draw, because that would be
24 absolutely inappropriate at this time. We will have you
25 back out very shortly. And we'll proceed at that time.

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1 Thank you.

2 (Jury retires to jury room at 2:54 p.m.)

3 THE COURT: All right. Anything from the Defense at
4 this point, Mr. Barr?

5 MR. BARR: Yes, sir. Judge, I'm not going to waste
6 time -- waste the Court's time. Jurisdiction and venue.
7 Of course I'm going to make a motion for a Directed
8 Verdict, but, Judge, quite frankly, I have been listening
9 to the evidence in this case. I have been paying
10 attention to it from the first witness that got on the
11 witness stand. In this indictment, it alleges that this
12 incident occurred in Williamsburg County. The testimony
13 is absolutely unequivocally clear that these officer, and
14 really you're only talking about one officer, because
15 she's the only person that has testified, don't know
16 whether or not this incident occurred in Georgetown or
17 Williamsburg County.

18 Now, what the prosecution has attempted to do and I
19 assume they did this on lunch break, they've attempted to
20 get this woman to come to court and say somehow she
21 managed to glue together these various clues that Mr.
22 VICTIM gave her that enable her to go out on Highway 521
23 where he claimed that he was riding at the time that he
24 supposedly came -- came to this point, turn off of
25 Highway 521 I suppose, and somewhere on Black River.

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1 Now, Mr. VICTIM testified under oath on more than one
2 occasion that he does not know what county he was in.
3 Ms. Rogers say today, as I said after much, much ado and
4 much preparation, that well, I took and put together the
5 description that I thought based on what he gave. And
6 Lord knows, I don't know how in the world somebody could
7 find a spot on Black River. Black River runs from --
8 from Kingstree back to Georgetown.

9 But, in any event, she now asserts that well, I went
10 to a spot that I believe was the spot that he was at.
11 Your Honor, if in fact what she believe would've been the
12 spot, then what she should've done, come get Mr. VICTIM,
13 put him in the car and carried him out there and said, is
14 this the spot. If it is -- and for her -- and determine
15 whether or not it's in Williamsburg County. Judge, I
16 would submit to you that that was never done. The
17 testimony is unquestionably clear on that issue. And,
18 Judge, I would submit failed to establish if jurisdiction
19 -- if they fail to establish that this alleged incident
20 supposedly occurred in Williamsburg County, then it's
21 curtain time.

22 And, Judge, quite frankly, I -- I -- I just -- I
23 don't see how in the world they can get around that in
24 this case because they hadn't -- they have not done it.
25 At the most, at the most, this officer has said -- and

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1 nobody's seen those directions but her -- I believe that
2 this where he was. And this point where I believe he was
3 is in Georgetown County. Judge, that's not enough.

4 THE COURT: Williamsburg County.

5 MR. BARR: In Williamsburg County. That's just not
6 enough. They have to establish that it's in Williamsburg
7 County.

8 Now, as far as the Motion for Directed Verdict, Your
9 Honor, quite frankly, I think that if the Court grants
10 our motion, then that makes the issue of Directed Verdict
11 moot. But since I'm standing up, I'll go ahead and make
12 the motion anyhow. We would submit that the evidence is
13 insufficient as a matter of law regarding the elements of
14 criminal sexual conduct in the second degree as well as
15 kidnaping to send this case to the jury. Now, as I read
16 the statute, and as I know our Courts interpret what's
17 called a sexual pattern, a sexual pattern requires
18 penetration whether or not it's vaginal or anal. There
19 has been no testimony, none -- as close as I pushed Mr.
20 VICTIM, there's been no testimony in this case that there
21 was anal penetration. The law is very clear on that, and
22 that's actually required in order to establish a sexual
23 assault. And, Your Honor, we ---

24 THE COURT: You're saying that Mr. VICTIM did not
25 testify that there was anal penetration? You used the

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1 terminology insert his penis in your anal cavity several
2 times as pretty much a recitation of what he had said on
3 the witness stand.

4 MR. BARR: Yes, sir.

5 THE COURT: How is that not a sexual battery as
6 defined in 16-3-655? If the jury were to except that as
7 true?

8 MR. BARR: Well, Judge, I -- I -- I think that --
9 that of course in response to my question, my question
10 was of the generic nature which follows the statute. But
11 I think insofar as specifying exactly, that is
12 capitulation, I think it becomes necessary that the
13 prosecution actually elicit testimony to that effect.
14 And my only point is I don't think that that was done.

15 Now, on the issue of the kidnaping.

16 THE COURT: Yes, sir.

17 MR. BARR: We would submit that, in this case, of
18 course you know -- you're thoroughly familiar with the
19 elements of kidnaping. I'm -- I'm concerned about the
20 carrying away, in this instance, based on the testimony.
21 Because there -- there's been no testimony concerning the
22 amount of distance. And of course I realize that -- that
23 in terms of the way that the Court interprets this thing
24 there's emphasis placed on the other elements as well
25 such as taking a person against his will and without the

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1 lawful right to do so. But in this case, we would submit
2 that -- that kidnaping requires anything -- something
3 more than just slight movement. And in this case, it's
4 unclear as to what distance, if any, the Defendant
5 supposedly moved the victim. So I'm not going to argue,
6 at least not too strenuously for these other issue --
7 other elements because, quite frankly, Judge, I think
8 that depending upon how you look at the evidence, you --
9 you may very well find that there might be something in
10 the record that might support the other elements. But
11 that -- that's one that concerns me.

12 But, however, Judge, I -- I do believe that -- that
13 all of that as it relates to the Motion for Directed
14 Verdict, I think it's all another day. Because this --
15 this case has a jurisdictional defect and it's on --- the
16 front of it. Your Honor, I respectfully request, and I
17 know it's going to be hard for you to do, but, Judge, I
18 do -- would -- I implore the Court to apply the law in
19 this case and dismiss this case because the prosecution
20 hadn't presented any evidence to establish that this case
21 was in Williamsburg County. All, at most, what this
22 does, it establishes the -- the -- Ms. Rogers' opinion
23 concerning where she thought this incident may have
24 occurred based on what she indicated that -- and based on
25 her interpretation, she said, of what she claimed Mr.

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1 VICTIM told her.

2 THE COURT: All right. Let me correct something I
3 stated on the record. Sexual battery is defined not in
4 655, but in 651. I'll address that point first. I'll
5 address these in reverse order. Ms. Barr, what do you
6 make of Mr. Barr's argument that there is no evidence
7 from which a jury could base a decision in this case that
8 a sexual battery occurred under 16-3-651?

9 MS. BARR: Judge, my response is that sometimes I
10 wonder if Defense counsel and I were actually in the same
11 trial. I mean, clearly, the victim Mr. VICTIM testified
12 that the Defendant took him out of the tent and took him
13 to another tent. He -- and unfortunately I had to be
14 graphic, but I had to do so for the purpose of this
15 motion. And he testifies the Defendant placed his penis
16 inside his rectum and it was painful. Judge, I don't
17 know what else would be required under the statute to
18 prove sexual battery to the extent that it encompasses
19 anal intercourse. I mean, I ---

20 THE COURT: All right. Mr. Barr, the -- I'm
21 concerned with existence of evidence at this point, not
22 the weight. You can argue that, but I'm going to deny
23 your motion on the sexual battery because it is defined
24 as -- the pertinent part is the anal intercourse or any
25 intrusion however slight of any part of a person's body

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1 or any object into the genitals or anal openings of
2 another person's body.

3 As far as kidnaping is concerned, Ms. Barr, does the
4 State continue to -- desire to continue to pursue
5 kidnaping?

6 MS. BARR: Yes, sir.

7 THE COURT: All right. Kidnaping statute is 16-3-910.
8 The case law has interpreted that as kidnaping commences
9 when one is wrongfully deprived of freedom and continues
10 until that freedom is restored. And as far as case law
11 is concerned, the kidnaping has been seen to occur. My
12 recollection of one case is when someone approached one --
13 -- someone else with a knife or under some means of force
14 and forced that person to go to the steps of an apartment
15 to the pool complex of the same apartment. So in
16 laymen's terms, it may not be the kidnaping that we see
17 in a movie or television, but as contemplated by case
18 law. Again, I'm denying the motion on that.

19 As far as the evidence of where the event took
20 place, Ms. Barr, do you agree that it is at least vital
21 to have proof that the events complained of occurred in
22 Williamsburg County?

23 MS. BARR: Yes, sir.

24 THE COURT: All right. For example, you would agree
25 that if all of your witnesses got up there and said they

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1 had no clue at all under any circumstance where this
2 happened, would you agree that your case would have a
3 fatal defect?

4 MS. BARR: I would agree. Yes, sir.

5 THE COURT: All right. What's your position on the
6 evidence insofar as proof of the whereabouts of the
7 crime?

8 MS. BARR: Your Honor, the victim in the case -- my
9 recollection of the testimony that the victim testified
10 that he was 11 years old when this happened to him. He
11 had no idea whether he was in Williamsburg County or
12 Georgetown County. He knows that he was in Andrews. He
13 knows that he was on Black River. That's consistent with
14 the handwritten statements that he gave to both
15 Georgetown County as well as Williamsburg County
16 Sheriff's Department. Judge, he testified that later,
17 after it was reported, he knew that it was in
18 Williamsburg County. That testimony went before this
19 jury without objection. In addition, there was testimony
20 that he gave directions to both Georgetown and
21 Williamsburg County Sheriff's Department as to the
22 location. Sergeant Rogers testified that she followed
23 those directions to the letter. Those directions led her
24 to a site in Williamsburg County and she was absolutely
25 without a doubt -- one, she followed the directions.

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1 Two, that those directions led her to a location in
2 Williamsburg County.

3 And, Judge, we would submit that based on that
4 testimony coupled with the testimony of the victim as to
5 where it happened is proof that the crime complained of
6 occurred in Williamsburg County. And, Judge, it's -- it
7 certainly -- Mr. Barr wants to argue whether or not
8 there's a certain degree of weight that should be
9 assigned to the victim and/or the officer's testimony,
10 he's free to argue that. But there's certainly enough
11 evidence to submit that issue that -- this particular
12 case to the jury for its consideration.

13 THE COURT: All right. I agree with Mr. Barr that
14 the evidence is hazy. And I may re-visit this at the
15 conclusion of all the evidence when you renew your
16 motion. But at this point I'm going to deny your motion.
17 I think that there is evidence, however weak the
18 whereabouts of the alleged incident. I'm going to deny
19 your motion at this time, Mr. Barr. All right ---

20 MR. BARR: Your Honor, if I might -- if I understand
21 jurisdiction -- and of course I can make that motion any
22 time because the jurisdiction because aside from the
23 issue in the indictment as to where the offense allegedly
24 took place, I think in terms of -- of entertaining the
25 prosecution in this case in this county and in this court

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1 the prosecution must prove that the offense occurred in
2 Williamsburg County. And, Judge, I -- I just don't
3 believe -- and I think that that's not a jury issue. I
4 think that's an issue of the Court. Jurisdiction is a --
5 is a -- is a jurisdictional issue, and it's -- it's an
6 issue for the Court to decide. And, Judge, as -- as --
7 in terms of what -- what's presented to you at the 11th
8 hour through that last witness, notwithstanding the fact
9 that this witness, when I say the alleged victim,
10 categorically states that he did not know what county he
11 was in. He'd never been back out there since -- since he
12 was out there at the time that he didn't know what county
13 he was in. But somehow Ms. Rogers can have some kind of
14 homing effect whereby, independent of his verification as
15 to where the location was, that the event did in fact
16 take place if it took place, somehow she just -- she
17 manages to take what she has indicated in script and she
18 found a location that she believes resembles what he has
19 described and she attaches to that the significance of
20 the site of this incident. Judge, that's just -- that's
21 ---

22 THE COURT: I understand your argument. And I'll
23 deny your motion at this time. All right, otherwise you
24 ready to proceed, Mr. Barr?

25 MR. BARR: Your Honor, I would request that the

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1 Defendant be advised concerning his right to take the
2 witness stand or not take the witness stand.

3 THE COURT: All right. And I'm not going to hold you
4 to it, but is he -- is he going to be your first witness?

5 MR. BARR: Judge, we really hadn't decided that.
6 After -- once we decide that, I intend to ask the Court
7 for a brief ten-minute recess to make sure that we've got
8 our preparation.

9 THE COURT: All right. And what I'll do then is, if
10 he turns out not to be your first witness -- should he
11 choose to testify, if he turns out not to be your first
12 witness, I wanted to make sure that nothing that any of
13 the other witnesses you may call have to say would cause
14 him to change his mind. Because, in other words, the
15 inquiry may --- immediate time he's going to take or not
16 take the stand. Do you understand that?

17 MR. BARR: Yes, sir.

18 THE COURT: All right. Would you come forward,
19 please, Mr. Taylor.

20 (Mr. Taylor sworn).

21 Questions to Defendant by The Court:

22 THE COURT: All right. What's your name, sir? You
23 can stand right there.

24 A. I'm Robert Troy Taylor.

25 THE COURT: All right, Mr. Taylor, what's your age?

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1 A. I am 37 years old.

2 THE COURT: All right. You are represented in this
3 case by Mr. Charles David Barr; is that correct?

4 A. Yes, sir.

5 THE COURT: What's your education?

6 A. I have my bachelor's degree in Christian studies
7 from North Greenville College. I've started work on my
8 master's degree, but at this point it's ...

9 THE COURT: All right. We've now reached a stage in
10 this trial where you can present your defense. You have
11 the right under the Fifth Amendment to the United States
12 Constitution, in layman's terms, it's the right to
13 silence. You have the right to say nothing at all. Do
14 you understand that?

15 A. Yes, sir.

16 THE COURT: Now, the Fifth Amendment states, and I'll
17 read it to you in pertinent part, no person shall be
18 compelled in any criminal case to be a witness against
19 himself. You understand your right?

20 A. Yes, sir.

21 THE COURT: Do you understand that that is your
22 personal right and no one can waive that right except for
23 you?

24 A. Yes, sir.

25 THE COURT: In other words, Mr. Barr can't say I'm

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1 calling you to the witness stand whether you want to go
2 or not. Do you understand that?

3 A. Yes, sir.

4 THE COURT: All right. Again, this means you cannot
5 be required to testify in this case. You have a right to
6 testify, however. Again, no one can make you testify. I
7 can't. The State of South Carolina can't. No one can
8 make you testify. Do you understand that?

9 A. Yes, sir.

10 THE COURT: All right. If you decide to testify, you
11 will be subject to the same rules that govern other
12 witnesses' testimony. Do you understand that?

13 A. I believe I ---

14 THE COURT: All right. The same rules ---

15 A. I'm sure you're going to expand, yeah.

16 THE COURT: Sir?

17 A. I'm sure you're going to expand on that, but I think
18 at this point I do.

19 THE COURT: Well, I'm going to expand some extent,
20 but I want to make sure -- one of the questions I will
21 ask you at the end is if you have discussed this
22 particular point, of you testifying or not, with your
23 lawyer sufficiently. Again, you'll have to make that
24 determination along with Mr. Barr. But, to repeat, if
25 you decide to testify, you will be subject to same rules

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1 of evidence that govern the testimony of other witnesses.
2 Do you understand that?

3 A. Yes, sir.

4 THE COURT: All right. And you've heard us talk
5 about the rules of evidence numerous times during the
6 trial, have you not?

7 A. Yes, sir.

8 THE COURT: All right. In other words, you may be
9 examined and cross examined on any relevant issue in this
10 case. In addition, if you have any convictions involving
11 dishonesty or false statement or for crimes punishable
12 for imprisonment for more than one year and if I
13 determine at the appropriate time that the probative
14 value of admitting that evidence outweighs its
15 prejudicial effect, then the solicitor will be able to
16 introduce your criminal record to attack your
17 credibility. Do you understand that?

18 A. I do. Yes, sir.

19 THE COURT: All right. If you decide to testify, the
20 decision that you make in that regard has to be made
21 freely, voluntarily, and intelligently. And you have to
22 do that with knowledge of your rights under the Fifth
23 Amendment that I just discussed a few minutes ago, and
24 the consequences of course that would result if you
25 decide to testify. Now, if you decide not to testify, I

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1 will instruct the jury that they cannot under any
2 circumstance give any weight to the fact that you did not
3 testify. In other words, I will tell the jury very
4 specifically that they cannot even discuss that in the
5 jury room. Do you understand that?

6 A. Yes, sir.

7 THE COURT: So, in other words, if you decide not to
8 testify, I tell the jury that they cannot give that fact
9 any weight whatsoever. As a matter of fact, the Supreme
10 Court says that I can't even when I talk to the jury use
11 the word failure when I describe the fact that you didn't
12 testify.

13 A. Okay.

14 THE COURT: In other words, I would tell the jury
15 that you didn't testify and they can't hold that against
16 you because you do have the rights that you have under
17 the Fifth Amendment. Do you understand that?

18 A. Yes, sir.

19 THE COURT: All right. It's entirely up to you
20 whether or not you decide to testify. Now, I don't know
21 -- and no one is to be privy to any discussions you have
22 with Mr. Barr, because that's between you and him. You
23 can discuss this further with Mr. Barr. You can discuss
24 it with your family and friends and anybody else that you
25 want to discuss it with. But the final decision will be

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1 up to you. Do you understand that?

2 A. Yes, sir.

3 THE COURT: All right. Do you understand everything
4 that I've explained to you?

5 A. Yes, sir.

6 THE COURT: Is there anything you want me to go back
7 over?

8 A. I don't believe so.

9 THE COURT: All right. Do you have any questions at
10 all, again, about what I've explained to you?

11 A. Well, if I invoke the Fifth Amendment, that means I
12 don't take the stand. Now, if I take the stand, I still
13 have the right to invoke the Fifth Amendment at times or
14 do not -- at that point I cannot invoke the Fifth
15 Amendment?

16 THE COURT: Well, again, I -- I'm assuming, in the
17 context of this case, you will not be able to invoke the
18 Fifth Amendment insofar as questions pertaining to this
19 case or concern or of -- if you committed a bank robbery
20 that nobody knows about and somebody asks you a question
21 involving that, you can invoke the Fifth Amendment. But,
22 no, Mr. Barr, I -- I don't want to infringe on your
23 counsel to Mr. Taylor, but his question is whether or not
24 ---

25 MR. BARR: Judge, we -- we've -- he and I have

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1 already talked about this -- this issue of the Fifth
2 Amendment ---

3 A. I'm ---

4 MR. BARR: --- and I thought we had that clear.

5 THE COURT: Wouldn't be able to selectively ---

6 MR. BARR: No, sir.

7 THE COURT: --- invoke the Fifth Amendment? You
8 understand that?

9 A. Yes, sir.

10 THE COURT: All right. In the context of this case -
11 --

12 A. Yes.

13 THE COURT: --- you understand that?

14 A. Yes, sir.

15 THE COURT: Now, do you need to talk to your lawyer
16 any additional time about this particular subject?

17 A. Yeah, I would appreciate that.

18 THE COURT: And I want to make sure I tell you one
19 thing that I tell folks that are similarly situated as
20 you: don't take my comments and my statements to you as
21 being indicative of whether I am pushing you to testify
22 or not testify. I'm simply, as the law requires,
23 explaining to you what your rights are. Do you
24 understand that?

25 A. Yes, sir.

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1 THE COURT: All right. Now, Mr. Barr, I will
2 certainly give you the time that you need to discuss this
3 issue with your client. And, in addition, you indicated
4 you needed some time to get your ducks in a row
5 otherwise?

6 MR. BARR: Yes, sir. And Judge, of course, I -- you
7 -- you -- you've mentioned this in your -- in your
8 remarks, but if you will recall we filed a Motion in
9 Limine concerning whether or not the Defense would be
10 allowed to use any one of the -- I think there are only
11 three prior convictions.

12 THE COURT: Uh-huh.

13 MR. BARR: Any one of the three prior convictions to
14 impeach if the Defendant should -- should take the
15 witness stand. And quite frankly, I think we're at a
16 point now where I almost need to know whether or not if
17 he chooses to take the witness stand, whether or not he
18 will be -- they will be able to impeach him with -- with
19 a prior conviction.

20 THE COURT: Well, what I can't do, Mr. Barr -- well,
21 let me first get your input on that Ms. Barr.

22 MS. BARR: Judge, it was my understanding that he had
23 decided in chambers that he couldn't make a preliminary
24 ruling regarding that issue. And of course I think
25 that's probably an appropriate response. Of course we

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1 know as trial lawyers that the possibility exists that a
2 witness will open the door to certain things that may be
3 otherwise prohibited. So we think the appropriate time
4 to take that matter up is after the Defendant has
5 testified if he so chooses.

6 THE COURT: All right. And the prior convictions
7 you're talking about, Mr. Barr, since I don't -- I ---

8 MR. BARR: Well ---

9 THE COURT: --- frankly, the only ones I know about
10 are what I read in ---

11 MR. BARR: Yes, sir. .

12 THE COURT: --- 45-page transcript.

13 MR. BARR: Well, Judge, the prosecutor obviously does
14 not understand what I'm referring to. Because I mean,
15 every day -- any time we put a witness on the witness
16 stand, in advance of putting that witness on the witness
17 stand, we're allowed to examine the impeachment evidence,
18 that is if it's by way of a prior conviction. In other
19 words, we usually sit down and look at the -- the
20 conviction -- whether or not it actually qualifies as an
21 impeachment conviction. And the only thing that I'm
22 asking for here -- and if I -- if I do not know here
23 whether or not the Court is going to allow and -- and --
24 and it's our position that clearly, under the rules, that
25 any one of the three prior convictions ---

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1 THE COURT: And that's the two lewd acts and ---

2 MR. BARR: Two lewd acts and one CSC 2nd. He can be
3 impeached with either -- any one of those three, or all
4 three if he takes the witness stand. But our position
5 is, under 403, is that this -- the -- the -- to allow
6 impeachment in this particular case, and Your Honor,
7 you've -- you've now heard all the facts that the
8 prosecution will -- will -- will actually present,
9 assuming that there is no rebuttal. And quite frankly, I
10 don't think it's necessary to get rebuttal in order to
11 make -- make this determination -- but you've now heard
12 what the evidentiary matters are going to be. And Judge,
13 I -- I -- I just -- there's no way we can make a decision
14 now regarding putting him -- whether or not he should
15 take the witness stand not knowing whether or not he will
16 -- the prosecution will be allowed to impeach him with a
17 prior conviction.

18 THE COURT: Well, Mr. Barr, my understanding of the -
19 - of the law is that I'm not to give any advance or
20 advisory ruling on that particular point. Because as I
21 indicated to Mr. Taylor a moment ago, if he takes the
22 stand, then he will be subject to the same rules. What
23 you're looking for, it -- it's obviously an advanced
24 ruling that would impact on his decision in the first
25 place. Now, I will tell you this, if hypothetically a

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1 witness who is a Defendant were to take the stand and
2 deny, for example, the admission of a crime for which
3 he's already been convicted that forms part of a common
4 scheme or plan, there would be some serious questions as
5 to whether or not that conviction should come in just
6 because he's denied that he committed the act. In other
7 words, he said on one occasion I'm guilty.

8 MR. BARR: Yes, sir.

9 THE COURT: And if he were to take the stand and say,
10 well, that never happened ---

11 MR. BARR: Yeah.

12 THE COURT: -- well, then certainly that conviction
13 or that ---

14 MR. BARR: Uh-huh.

15 THE COURT: --- context would come. However, I don't
16 think Rule 609 of the case law says that I have to give
17 an advance ruling, a blanket ruling as to whether or not
18 evidence of prior convictions would come in on the issue
19 of credibility. Now, I'll give you ten or 15 minutes, or
20 however long you need, to talk to Mr. Taylor about that
21 particular subject. And I'll take the book that I have
22 and go back into my office and check, just make sure I'm
23 right.

24 MR. BARR: Yes, sir.

25 THE COURT: But I think I am.

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1 MR. BARR: All right, sir, Judge, I -- I just ---

2 THE COURT: And again, I know that this is a serious
3 issue. And ten or 15 minutes, if that's not enough, let
4 me know.

5 MR. BARR: Yes, sir.

6 THE COURT: All right. Now, Mr. Taylor, what I'm
7 going to do when we come back out, I may re-examine these
8 questions with you because these are your rights and
9 they're extremely important rights. They're not rights
10 we give lip service to. They're your rights under the
11 Constitution.

12 A. Thank you.

13 THE COURT: All right.

14 (Off the record)

15 THE COURT: All right. Ms. Barr, Mr. Barr, you
16 ready?

17 MS. BARR: Yes, sir.

18 THE COURT: All right, What we'll do, we'll take one
19 witness of Mr. Barr and out of an abundance of caution,
20 that will allow Mr. Barr and his client the afternoon and
21 the evening and tomorrow morning until 9:30 to resolve
22 the issue of whether or not he will testify. When I
23 bring the jury out -- do you have a timer as to how long
24 they've been out?

25 COURT REPORTER: I have they took a jury break at

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1 2:53.

2 THE COURT: 2:53?

3 THE COURT: All right.

4 (Off the record discussion).

5 THE COURT: All right. I'll take the bullet for the
6 length of time the jury's been out. And then we'll
7 continue with the trial. And I will tell the jury that
8 that State has rested. And you've rested in front of the
9 jury, correct?

10 MS. BARR: I did, Your Honor.

11 THE COURT: All right. Anything else, Mr. Barr?

12 MR. BARR: No, sir.

13 THE COURT: All right. Bring in the jury.

14 (Jury enters the courtroom at 3:50 p.m.)

15 THE COURT: And again, I appreciate your patience.
16 We concluded the recess. And I wanted to make sure you
17 understand that neither the State nor the Defense are
18 responsible for any undue delay. As I indicated to you
19 earlier, the rules that we go simply require us to take
20 the breaks from time to time that we do take. I hope
21 that if you choose to hold that against anybody, hold it
22 against me, because I'm the one that has to make sure
23 that the rules are followed. And again, the procedures
24 that we have are -- are -- are set forth, and they're
25 mandatory. Ms. Barr, the State has rested; is that

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1 correct?

2 MS. BARR: That is correct, Your Honor.

3 THE COURT: All right, ladies and gentlemen, you've
4 heard the State's presentation of evidence. The next
5 stage in the trial will be to -- for the Defense, if it
6 so chooses, to present evidence for your consideration.
7 Mr. Barr, does the Defense intend to call a witness?

8 MR. BARR: Yes, sir.

9 THE COURT: All right.

10 MR. BARR: The Defense calls Mr. Trevor M
11 (Mr. M is sworn).

12 DIRECT EXAMINATION BY MR. BARR:

13 Q. Mr. M, would you state your full name for the
14 record, please?

15 A. Christian Trevor M.

16 Q. And how old are you?

17 A. I'm 20.

18 Q. Where do you live?

19 A. Murrells, Inlet, South Carolina.

20 Q. And are you married, single?

21 A. Single.

22 Q. Have any children?

23 A. No, sir.

24 Q. Have you lived in Murrells Inlet all your life?

25 A. Yes, sir.

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1 Q. And you -- you know Troy Taylor?

2 A. Yes, sir.

3 Q. And do you know Mr. VICTIM?

4 A. Uh-huh.

5 Q. How is it that you came to know both of them?

6 A. Mr. Taylor's my uncle. And VICTIM I've known since I
7 -- I was a kid through family. Our parents were friends
8 through church or -- or -- or whatnot. And we played in
9 school and in sports together and stuff like that.

10 Q. Was there ever a time when you and -- and VICTIM..

11 A. What's that, sir?

12 Q. Do you call him VICTIM? Mr. VICTIM?

13 A. No.

14 Q. What'd you call him, VICTIM?

15 A. VICTIM, yeah.

16 Q. Was there ever a time when y'all -- you attended the
17 same church?

18 A. Yes, sir.

19 Q. And when was that?

20 A. Right around the time I was probably 11, 12, 13,
21 around that area.

22 Q. A long time ago?

23 A. Yes.

24 Q. And while attending that church, were you a part of
25 -- of -- a member of the youth ministry at ---

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1 A. Yes, sir.

2 Q. --- that church? What was the name of the church?

3 A. At the time, I believe it was LC3. It might have
4 been the formal name before that, I can't really remember
5 the name, but I believe it was Low Country Community
6 Church.

7 Q. And the name changed, but the same church that Troy
8 Taylor pastored?

9 A. Yes.

10 Q. And you say that you were one of the -- a member of
11 the youth ministry?

12 A. Yes, sir.

13 Q. As you recall, were there women in your youth group?

14 A. There were.

15 Q. These were young ladies?

16 A. Yes, sir.

17 Q. Let me tell you, I specifically want to direct your
18 attention to -- to a -- of course, you're familiar with
19 the allegations that have been raised by Mr. VICTIM
20 against Mr. Taylor, are you not?

21 A. Yes, sir. I am.

22 Q. And are -- do -- are you familiar with the youth
23 excursion that was sponsored by your church November 6th
24 and November 7th in 1998?

25 A. Yes, sir. I actually attended.

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1 Q. You attended?

2 A. Yes, sir.

3 Q. And how is that you came to attend that function?

4 A. Because I was a member of the church and the youth,
5 and we had heard about it at one of the meetings.

6 Q. Do you know the names of all of the young people who
7 were part of that group?

8 A. I could not name all of them. No, sir.

9 Q. Just -- but you know some of them?

10 A. Yes, sir.

11 Q. And was VICTIM one of the people that
12 participated in that -- in that function?

13 A. Yes, sir.

14 Q. Do you remember who -- you went camping, I believe,
15 did you not?

16 A. Yes, sir.

17 Q. And do you remember how you got to the campsite?

18 A. We rode in a van. It's one of those vans that fit
19 around 15 people. We rode in that and then they had one
20 other car with just all the equipment and bags and stuff
21 like that.

22 Q. So you actually used two different vehicles?

23 A. I believe so.

24 Q. Well, can -- do you have a recollection or you're
25 not sure or ---

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1 A. As far as I can remember, we only had two -- two
2 cars.

3 Q. So then, if you had two cars and -- and you were
4 about the same age as VICTIM, then there had to be
5 some other adults with you?

6 A. Yes, there were.

7 Q. Do you know who that was?

8 A. My uncle Troy was one of them. There was a couple
9 other adults that were part of the youth ministry. They
10 were helping out and watching. I can't think of any
11 names at the moment. As far as I can remember two other
12 adults.

13 Q. You don't remember any of their names?

14 A. No, sir.

15 Q. But you know there were at least two other adults?

16 A. Uh-huh.

17 Q. You're sure about that?

18 A. Yes, sir.

19 Q. Now, let's talk about the -- the camp -- camp --
20 campsite. When you -- after you got to the campsite and
21 you set up a camp -- set the camp up, how was the camp
22 set up?

23 A. Well, we initially were going to do tents, but there
24 weren't enough tents for everybody because we were
25 supposed to bring tents, but they didn't. So we decided

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1 to take a couple of the tarps that we had and set up
2 almost like a canopy and just the tarps ran over the back
3 and came over the top. The sides were open. The front
4 was open. Everybody just kind of laid, you know,
5 parallel and across, that way.

6 Q. And how many of those tarps did you have set up?

7 A. It was just one big canopy that everybody laid
8 under.

9 Q. So everybody that was involved in the camping trip
10 slept under one -- one roof, so to speak?

11 A. Yes, sir.

12 Q. There was not a separate canopy set up for adults
13 and another separate canopy set up for the younger
14 people?

15 A. No, sir.

16 Q. Now, do you have a recollection of -- of -- about --
17 you spent one night; is that correct?

18 A. Yes, sir.

19 Q. And do you recall about what time it was that --
20 that you -- you went to bed that night or you ---

21 A. I believe it was probably around 10:30, 11 o'clock
22 that night, somewhere around in there.

23 Q. And did everybody basically go to sleep about the
24 same time or?

25 A. Yes, sir. I stayed up pretty much all night.

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1 Because I couldn't sleep that night. But everybody went
2 and laid down, yes, at the same time.

3 Q. Okay. So do you remember -- do you have a
4 recollection of seeing VICTIM there in all that
5 time?

6 A. He was there. Yes.

7 Q. And from the time that -- who were you sleeping next
8 to?

9 A. I actually slept next to my uncle Troy. He used my
10 sleeping bag because his son, my -- my cousin Griffin ---

11 Q. That's Griffin?

12 A. --- was sleeping with him.

13 Q. So Griffin was with -- Griffin went with y'all on
14 the camping trip?

15 A. Yes, sir.

16 Q. How old was Griffin?

17 A. Griffin -- I'm not sure how old he was at the time.

18 Q. But he was young -- much younger?

19 A. Yeah, he was very much younger.

20 Q. Three, four years old, something like that?

21 A. Somewhere around in there.

22 Q. And Troy had Griffin with him?

23 A. Yeah, he slept in the sleeping bag with him.

24 Q. And you slept next to him?

25 A. Uh-huh. Just to his right side.

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1 Q. Now, I'm not going to ask you whether or not you're
2 a sound sleeper. But do -- do you have a recollection of
3 waking up at all during -- was it cold that night?

4 A. It was very cold that night. That's actually why I
5 let them borrow my sleeping bag, because it was so ---
6 Griffin was getting cold, so ---

7 Q. You let who borrow your sleeping bag?

8 A. Uncle Troy and Griffin.

9 Q. Borrow your sleeping bag?

10 A. Yes.

11 Q. Well, what did you sleep in?

12 A. Griffin's sleeping bag.

13 Q. Well, why did you let them use yours and you slept
14 in his?

15 A. Because mine was a down -- warmer one. I can't
16 think of the name of it, goose down.

17 Q. And you swapped bags with them?

18 A. Uh-huh.

19 Q. So now, do you have a recollection of anything
20 unusual happening that night, anybody getting up or -- or
21 ---

22 A. No, sir. Everybody was pretty silent throughout the
23 whole night. Nobody really got up at all.

24 Q. Do you know whether or not your uncle was next to
25 you all night or ---

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1 A. He was next to me all night.

2 Q. How do you know?

3 A. I -- I don't -- I don't sleep very well when I was a
4 kid because I had -- I don't know the medical term for
5 it, but I had bad dreams a lot. And earlier that -- that
6 night, we'd been talking about the Lizard Man. I don't
7 know if anybody's familiar with Lizard Man, but it had me
8 thinking so I didn't really sleep very well that night.
9 So I was up and I never saw anybody move, especially my
10 uncle Troy. He never moved.

11 Q. Was there another tent some place where you -- I
12 believe you had your -- did you have your gear stored in
13 this other -- under this same tent that you were under?

14 A. I believe there was another tent that -- that all
15 our -- our stuff was in just in case it would rain, they
16 had stored in another tent.

17 Q. Were there any people sleeping under that tent?

18 A. No, sir.

19 Q. When you -- when you woke up that morning, do you
20 remember whether you saw your uncle Troy and Griffin, or
21 did you see VICTIM ?

22 A. I saw everybody. Everybody was where they were the
23 night before sleeping.

24 Q. And -- and did you -- you didn't see VICTIM and
25 your uncle sleeping next to each other?

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1 A. No, sir.

2 Q. Everybody woke up pretty much the same time?

3 A. Around about --- you know, everybody kind of
4 staggered out.

5 Q. Do you remember hearing any -- any conversation
6 about -- about VICTIM and your uncle waking up in --
7 in a -- in a position next to each other?

8 A. No, sir.

9 Q. Was your uncle still in the sleeping bag with
10 Griffin when you woke up that morning?

11 A. Yes, sir.

12 Q. Now, approximately how many young people were
13 present at the campsite that night?

14 A. I'd say right around ten people, give or take a few.

15 Q. And do you -- do you remember who was the first
16 person to go to bed?

17 A. I can't remember that, sir.

18 Q. How about the last -- the first person to wake up?

19 A. I can't remember that to be certain.

20 Q. Y'all have a fire going?

21 A. Yes, sir.

22 Q. Fire wasn't under the tent, though, was it?

23 A. No.

24 Q. Outside the tent?

25 A. It was just outside the tent, yes. Or the canopy.

HEARING

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1 Q. Now, do you know of anything at all that took place
2 during the night that you were asleep that appeared to be
3 unusual in any way?

4 A. Nothing unusual happened at all, that -- that I
5 witnessed.

6 Q. Who slept next -- well, who slept on -- your uncle
7 slept on one side of you. Who slept on the other side;
8 do you remember?

9 A. I can't remember that, sir. It was one of the other
10 younger people that were -- that was there.

11 Q. One of the other young people?

12 A. Yes.

13 Q. And how about the adults, were they all under the
14 same canopy?

15 A. Yes, sir.

16 Q. Were there any females there?

17 A. No, sir.

18 Q. No females?

19 A. No females opted to go to the trip because not too
20 many females like to camp too often.

21 Q. Get out in the wilderness with bugs and all that?

22 A. Right.

23 Q. Thank you, sir. Would you answer any questions that
24 this young lady, the assistant solicitor for the
25 prosecution.

HEARING

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1 MR. MC... - CROSS EXAMINATION BY MS. BARR:

2 Q. Mr. Mc... is it? You're Mr. Mc... ?

3 A. Yes, ma'am.

4 Q. And you testified that the Defendant is your uncle?

5 A. Yes, ma'am.

6 Q. You all grew up together, or you grew up with him I
7 should say?

8 A. Yes, ma'am.

9 Q. You're very close to him?

10 A. Yes, ma'am.

11 Q. Now, how are you related, is it your mother that's
12 his sibling or your father that's his sibling?

13 A. My mother.

14 Q. Is she close with him as well?

15 A. Yes, ma'am.

16 Q. All right. In addition to this camping trip, there
17 were other activities that you were at or were involved
18 in in the -- to the extent that in your uncle's role as
19 pastor of that church at the time?

20 A. What's the question?

21 Q. Other activities that you were involved in that you
22 went to as a result of the Defendant being the pastor of
23 the church at the time?

24 A. Yes, I went to many youth trips.

25 Q. All right. Now, you, of course, you love your

HEARING

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- 1 uncle?
- 2 A. Yes.
- 3 Q. And you certainly don't want anything bad to happen
- 4 to him, do you?
- 5 A. No.
- 6 Q. You don't want to see him convicted of this crime,
- 7 do you?
- 8 A. No.
- 9 Q. Now, you're not telling this jury that you were
- 10 awake the entire night, are you?
- 11 A. No, I'm not saying that at all.
- 12 Q. And we certainly wouldn't expect you to know what
- 13 happened while you were asleep, would you?
- 14 A. Huh-uh.
- 15 Q. You can't say beyond a shadow of a doubt that the
- 16 rape of **VICTIM** did or did not happen. You can just
- 17 ---
- 18 A. I ---
- 19 Q. --- say you know what you saw or didn't see; is that
- 20 right?
- 21 A. Yes. Uh-huh.
- 22 Q. You indicated that all boys were on the trip.
- 23 A. (Nods head affirmatively).
- 24 Q. I need you to answer verbally.
- 25 A. Yes, ma'am.

HEARING

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- 1 Q. Everybody was in the van?
- 2 A. Two vans.
- 3 Q. You all left the church and then went to the
- 4 campsite?
- 5 A. Yes, ma'am.
- 6 Q. The campsite -- the campsite was in Andrews, South
- 7 Carolina?
- 8 A. That I cannot confirm.
- 9 Q. Was it off 521?
- 10 A. It was on a hunting club on Black River.
- 11 Q. On the Black River? It was on the Black River?
- 12 A. Yes.
- 13 Q. All right. You all had a bonfire?
- 14 A. Yes.
- 15 Q. Everybody went to sleep about 10:30, 11 o'clock that
- 16 night?
- 17 A. Right -- right around that time.
- 18 Q. Now, you testified that you don't remember all the
- 19 names of the boys who went on that camping trip, can you?
- 20 A. Not all of them.
- 21 Q. Is there anyone other than VICTIM that you remember as
- 22 going on that camping trip?
- 23 A. A friend of mine Zack W
- 24 Q. Anybody else?
- 25 A. There was some people that I never really knew that

HEARING

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1 well, so I don't -- I can't remember the names at this
2 time.

3 Q. So the only persons that you can testify to with any
4 certainty as being on the trip other than yourself would
5 be the Defendant who's your uncle?

6 A. Uh-huh.

7 Q. Zack W. , who would've been around the same age
8 as you; is that right?

9 A. Yes.

10 Q. And Mr. VICTIM is that right?

11 A. Yes, ma'am.

12 Q. Everybody else you don't remember, including the
13 adults; is that right?

14 A. Uh-huh.

15 Q. And you specifically recollect that there was
16 another tent erected that night, right, other than the
17 ones you all slept on?

18 A. There was one that had the -- all our stuff in it.

19 Q. Okay. Because it was raining that night?

20 A. It was supposed to. I can't remember if it ever
21 actually did or not. We -- we were making sure that
22 nothing got wet or anything.

23 Q. Where was VICTIM sleeping when you woke up that
24 morning?

25 A. That I can't remember.

HEARING

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1 Q. But I mean, you just testified to the jury, did you
2 not, that he wasn't sleeping next to your uncle?

3 A. Well, I was sleeping next to my uncle, so ---

4 Q. Well ---

5 A. --- I think I ---

6 Q. --- he -- he would've had two sides, though, right?

7 A. Yeah, but I mean, I'm right there. I would've seen
8 him if ---

9 Q. Okay. Well, who was sleeping next to him?

10 A. He -- we were on the outside of that tent.

11 Q. He -- your uncle was laying down. He has a right
12 side and a left side, right?

13 A. Yeah, because he was on the outside of the tent,
14 there was only one other side.

15 Q. There was no other person on the other side?

16 A. No, ma'am.

17 Q. Okay. You recollect that there was no other person
18 on the other side and you were next to him. Who else was
19 laying in the tent in what order?

20 A. I couldn't tell you exactly ---

21 Q. You have no idea, do you?

22 A. I couldn't tell you the exact order. I was 11 years
23 old at the time.

24 Q. I understand. That's exactly right. You were 11
25 years old at the time, and you don't remember all the

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1 details?

2 A. But I do remember laying to the right side of my
3 uncle with my -- my cousin Griffin in the tent -- in the
4 sleeping bag with him. I can tell you that right now for
5 a fact.

6 Q. But everything else you're not certain about because
7 you were 11, right?

8 A. Yeah.

9 Q. Now, if VICTIM were laying next to your uncle while
10 you were asleep, you can't dispute that, can you?

11 A. No.

12 Q. When did you first become aware that VICTIM had made
13 these allegations against your uncle?

14 A. Probably about somewhere around 2006.

15 Q. About a year or two ago?

16 A. About a year or two ago, yeah.

17 Q. Have you ever seen copies of any of his statements,
18 VICTIM's statements?

19 A. No.

20 Q. Never seen those?

21 A. I sure haven't.

22 Q. Did you ever go to law enforcement and tell them
23 your recollection of the events that happened on the
24 night in November of 1998?

25 A. No, ma'am.

HEARING

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1 Q. Didn't think it was important?

2 A. I am not going to answer that question.

3 Q. Don't want to answer that one?

4 A. Well, I refuse to answer that question.

5 Q. Thank you, sir. Appreciate it.

6 THE COURT: Re-direct, Mr. Barr?

7 RE-DIRECT EXAMINATION BY MR. BARR:

8 Q. Did any -- did any law enforcement officer ever come
9 to you to interview you about ---

10 A. No, sir.

11 Q. --- what you knew or did not know?

12 A. No, sir.

13 Q. And your identity was certainly known to ---

14 MS. BARR: Objection. Leading.

15 MR. BARR: I'll rephrase the question.

16 Q. knew you then, did he not?

17 A. Yes.

18 Q. And he knew you were there?

19 A. Yes.

20 Q. Have you ever gotten involved in any way in this
21 entire incident other than to come here today as a
22 witness?

23 A. No, sir. Today is my first day to even come and
24 talk to you.

25 Q. Thank you, sir.

HEARING

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1 THE COURT: Re-cross?

2 MS. BARR: No, Your Honor.

3 THE COURT: Thank you, sir. You can step down. Any
4 objection to this witness being excused if he desires to
5 be excused?

6 MR. BARR: No, sir.

7 MS. BARR: No objection by the State, Your Honor.

8 THE COURT: All right. Mr. Barr, your next witness
9 is coming from out of town; is that correct?

10 MR. BARR: Yes, sir.

11 THE COURT: All right. Ladies and gentlemen, we're
12 going to --it's 4:15 now. We're going to break for the
13 day. We will finish this trial tomorrow morning. And
14 you will have the case for your consideration easily
15 sometime tomorrow. We'll start back tomorrow morning at
16 9:30. We will not tarry. I will have you in this
17 courtroom at 9:30, so if you would be back in the jury
18 room tomorrow morning shortly before 9:30, we'll be
19 prepared to resume the trial at that time. Please do not
20 discuss the case among yourselves. Do not discuss it
21 among friends, family members, or coworkers because,
22 again, you've not heard all the evidence. It would be
23 inappropriate to discuss it with anyone or to begin to
24 form any opinions in your own mind. Enjoy your evening.
25 It'll be a little bit longer than normal. And we will

HEARING

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1 preserved it. But my ruling on The State vs. Chiles
2 still stands on that. Alright, Mr. Barr, not to hold
3 you to it, do you intend to call any other witnesses?

4 Mr. Barr: Judge, at this point, we intend to rest.
5 I think there are two other issues I need to make sure we
6 are clear on for the record.

7 The Court: Alright.

8 Mr. Barr: And that's with respect to the motion
9 that we filed for the motion for impeachment. And I
10 understand the court denied that motion.

11 The Court: Well, what I told you was I would rule
12 on it when the witness took the stand, if he took the
13 stand. Let's put it this way, on cross-examination of
14 the victim, and this may or may not be talking about
15 impeachment, it talks about further on Lyles, on cross-
16 examination of the victim, you ask repeated questions
17 about the circumstances behind the Georgetown county
18 incident.

19 Mr. Barr: Yes sir.

20 The Court: Alright, there was no question asked on
21 re-direct of the victim in response to the circumstances
22 behind the disposition of the Georgetown county incident.
23 If your client were to take the stand, I would be hard
24 pressed not to permit the prosecution not to allow some
25 examination into the disposition of that since you've

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1 taken great issue with it and since it does, whether or
2 not he's convicted does have some relevance as to whether
3 or not there was in fact the common scheme of plan. And
4 that's not an advisory ruling and that doesn't have
5 anything to do with impeachment, but of course, your
6 client has already told me he's not going to testify, but
7 that would have been my parameters.

8 Mr. Barr: Judge, of course, now our decision not to
9 testify is certainly to some degree, has been affected by
10 our not knowing whether or not the Defendant would be
11 impeached with a prior conviction and which is altogether
12 different from the Lyles issue.

13 The Court: And Mr. Barr, I don't want to keep you from
14 talking, but I specifically stated yesterday that my
15 decision on whether or not impeachment evidence would be
16 allowed insofar as the Defendant was concerned would be
17 based on a State vs. Bryant analysis when he took the
18 stand. I could not give you an advanced ruling on what
19 my decision would be on impeachment, because if I did so,
20 and then your client through questioning, or however,
21 opened the door to let that impeachment evidence in, then
22 you would cry foul saying I told you ahead of time that I
23 wasn't going to let that in.

24 Mr. Barr: Judge, you know, that's the situation
25 that doesn't stay the same. Depending on what the

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1 Defendant says on the witness stand, now of course, I do
2 believe that you could give a ruling where on the,
3 whether or not, you could use a prior conviction to
4 impeach him and depending upon how far he goes on the
5 witness stand in answering questions then that decision
6 can be changed and the impeachment evidence could be
7 allowed.

8 The Court: My inclination would have been not to
9 allow the lewd act convictions for impeachment purposes,
10 but unless he opens the door. So, how can I give you an
11 advanced ruling on what my ultimate decision would be
12 depending on how his testimony was.

13 Mr. Barr: Well, Judge I think you could easily do,
14 I think all you'd have to say is Look, if he gets on the
15 witness stand, I'm not going to allow him to be impeached
16 with any prior conviction unless he opens the door.

17 The Court: Alright, well, I see what you are trying
18 to accomplish here Mr. Barr, my ruling is that I am not
19 going to give you an advanced ruling on impeachment.

20 Mr. Barr: Alright sir.

21 The Court: As far as the evidence of common scheme
22 of plan is concerned, it's two different issues. It's
23 two different issues. I would probably not have
24 prohibited the State from questioning the witness since
25 you have questioned the victim quite extensively on the

HEARING

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1 Georgetown county incident. On the issue of common
2 scheme of plan.

3 Mr. Barr: Yes sir.

4 The Court: And the jury will again be instructed
5 that that's how they could use it, common scheme of plan,
6 that the State would be able to under a conviction.

7 Mr. Barr: Alright, next thing would be, I think you
8 held in abeyance a final ruling on the issue of, of
9 course, at the time, we probably considered it in
10 somewhat the nature of jurisdiction or venue or what do
11 you call it strictly venue. But if its venue, then we
12 move for a directed verdict on that issue and I think you
13 took that under advisement.

14 The Court: Yes sir, well, I held in, I've denied it
15 for the time being and I told you I would revisit at the
16 end and I will do that right now and I won't prejudice
17 you for bringing it again, since you technically haven't
18 rested. Now, the law is in this State, that the question
19 of venue in a criminal case is not jurisdictional. It
20 used to be. But in the 1990's the Supreme Court
21 clarified that and said venue is not jurisdictional,
22 however, it does say that for whatever difference it
23 makes, that the law when you are entitled to a directed
24 verdict is the same. You are entitled to a directed
25 verdict if the State fails to present evidence that the

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1 offense was committed in the county alleged in the
2 indictment, you are entitled to a directed verdict. Now,
3 the case of State vs. Blaton, says that the question of
4 venue does not involve the merits of the case and that's
5 what I've been trying to get to with y'all, in chambers
6 and not to be doing right now. Now, State vs. Williams
7 , says it is not necessary that the county in which the
8 crime was committed be proved affirmatively if there is
9 sufficient evidence from which it can be inferred. My
10 ruling yesterday, for the time being yesterday, was that
11 there was an inference that the crime was committed in
12 Williamsburg. The inference may not be strong in your
13 estimation, but there was an inference. Alright, now the
14 standard for establishing venue in the State vs. Crocker,
15 which is the most recent case, that is the Court of
16 Appeals case, says that it is not a stringent standard
17 for establishing venue for venue again need not be
18 affirmatively approved, circumstantial evidence of venue,
19 though slight is sufficient. Now, case law also says
20 State vs. Brisbon, it says the argument that venue must
21 be proved beyond a reasonable doubt lacks validity.
22 That's a Supreme Court case from 1996. I will be happy to
23 charge it. One of the cases that I've reviewed says that
24 if the state argues that the crime happened in
25 Williamsburg county, a finding of guilt establishes that

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1 the crime occurred in that county. In a receiving stolen
2 goods case, the Judge instructed the jury that the
3 indictment could be brought for receiving stolen goods in
4 any county where the Defendant possessed the goods.
5 That's not a correct statement of law because you have to
6 prove that's where the crime occurred in the county where
7 he received them. The dilemma that we have is yesterday
8 when you frankly did an effective job of cross-examining
9 Sergeant Rogers and the victim on the question of where
10 this happened, that cross-examination could have been
11 taken to mean two different things. One being the
12 general confusion about where it happened and therefore
13 did it happen. The question of why didn't the law
14 enforcement officer take the young man out there to
15 confirm it again showing that I assume you that you would
16 argue that on the issue of something ain't right here as
17 far as what they've done to prove this, but the dilemma
18 that I've got is the case law that says that venue, and
19 let's just call it place of offense, need not be
20 affirmatively proven, if proven satisfactory as long as
21 they've established an inference. In the case law it
22 says that they don't have to prove it beyond a reasonable
23 doubt. So, that's where we are on venue so as far as the
24 matter of law is concerned, I'm denying your motion
25 because however hazy or weak the testimony was, the

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1 victim testified more than once, that he knows it
2 happened in Williamsburg county, he didn't know when he
3 was 11, but he knows now. And I understand exactly what
4 you are talking about, but the case law will not allow me
5 to charge this jury that venue has to be proven beyond a
6 reasonable doubt. Do you disagree with that?

7 Mr. Barr: Well, Judge, for the record, we have
8 submitted a request to charge and that's confirming that
9 my charge is in the record. I'm satisfied with your
10 ruling.

11 The Court: Alright, anything else from you Mr. Barr
12 and I didn't mean to be seen as lecturing you, because
13 you certainly know the criminal law and what I'm trying
14 to do is adequately state more clearly what the law is,
15 at least my interpretation of it. I don't see how State
16 vs. Brisbon hasn't been overruled. But to be candid with
17 you, other case law, Court of Appeals cases say the
18 question of venue is for the trier of fact. And so what
19 do you do? That's what Ms. Barr indicated yesterday.
20 She takes the position that venue is an issue for the
21 trier of fact.

22 Mr. Barr: But Judge, inasmuch, as we are here now,
23 at that point, we had the issue, I would request a charge
24 on venue.

25 The Court: Alright, here's what I'm going to do

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1 then, I'm going to bring the jury out and again apologize
2 to them, and it's not you all's fault, that I promised
3 them that I would have them in the courtroom at 9:30 and
4 then I will allow you, should you choose, to call any
5 additional witnesses. If you rest, then I will ask for
6 any reply testimony and if there is none, I will send the
7 jury back out and you can restate your motion for the
8 record on the directed verdict and then I'll certainly
9 tell the jury that the next phase of the trial will be in
10 essence, the last stage of the trial as far as courtroom
11 participation is concerned and then we will argue the
12 charge, are both sides prepared, I assume both sides are
13 prepared to argue.

14 Mr. Barr: The defense is yes.

15 Solicitor Barr: Same here.

16 The Court: Alright, then you can bring the jury
17 back in.

18 (Jury brought back into the courtroom)

19 The Court: Alright ladies and gentlemen, thank you
20 very much. I'm sure what you are thinking now is that I
21 promised you I would have you back out here at 9:30 and
22 the only way I could accomplish that is if I went up
23 there and moved that minute hand back to 9:30, but that's
24 not the case. We have accomplished many things this
25 morning outside of your presence and keep in mind that

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1 the ultimate goal in this case is to make sure the State
2 and Defendant receive a fair and impartial and in fact, a
3 complete trial at your hand. So, what we do on many
4 occasions is discuss things outside of your presence that
5 do ensure streamlining of this process and I will commend
6 both lawyers for doing that even though when you are in a
7 15X30 room, it doesn't seem like that, but believe me,
8 especially with excellent lawyers, many things can be
9 accomplished that you don't realize. We are now prepared
10 to proceed with the trial. I am not 100% sure what the
11 schedule will be this morning but we are ready to proceed
12 but the defense is still engaged in submitting its case
13 to you and I will ask you Mr. Barr, does the defense have
14 any additional witnesses?

15 Mr. Barr: May I please the court, Judge, the
16 defense is now resting.

17 The Court: Alright sir. Ms. Barr, does the State
18 have any reply?

19 Ms. Barr: No, your honor.

20 The Court: Alright, well, ladies and gentlemen,
21 that means this, I've held up this blue book that I have
22 a couple of times to you, one thing in the rules requires
23 me at this point to discuss things with the attorneys, to
24 be honest with you, that I can't discuss with them, until
25 we get to this point and that specifically is the nature

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1 of the law, and the specifics of the law that will be
2 charged to you. So what we are going to do is this, I'm
3 going to allow you to go to your jury room and if any of
4 you smoke, you can take a smoke break, of course, with an
5 escort, the bailiff, you can't discuss the case yet, even
6 if you are taking a smoke break. What we are going to
7 accomplish during the break is review the proposed jury
8 charge and I am going to speak to the lawyers about the
9 time that they will argue to you because the next stage
10 of the process is going to be the arguments of the
11 attorneys to you. I will determine how long the
12 attorneys will take and then we will determine the
13 specifics of the law as I give it to you. Based on that,
14 I will probably have you back out of the jury room within
15 30 minutes, after that, I would assume that based upon my
16 experience with these types of things, the arguments and
17 the charge will be concluded before lunch. The attorneys
18 will certainly have every opportunity to fully and
19 completely provide their arguments to you and after that,
20 the jury charge will take place, so I just want to let
21 you know there is light at the end of this tunnel. I
22 commend you for the attention that you have paid so far,
23 again when you retire, don't discuss the case, you can't
24 do that yet but that time is coming shortly. Alright,
25 thank you very much ladies and gentlemen.

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1 (Jury is sent back to jury room)

2 The Court: Alright, Mr. Barr, would you like to
3 restate your motion for directed verdict.

4 Mr. Barr: Yes sir, Judge, we would again move for a
5 directed verdict of not guilty and we believe that the
6 State has failed to meet the burden of proof required
7 with respect to the elements of the defense of kidnaping,
8 with respect to the elements of the offense of CSC-2nd and
9 also with respect to the requirement of establishing
10 venue. We made arguments at the close of the State's
11 case concerning both of those issue and Judge; I think it
12 would be, probably at this point, I think those arguments
13 are already sufficiently stated in the record.

14 The Court: Alright, what I will do, Mr. Barr is
15 certainly let the record reflect and you can echo this or
16 not, let the record reflect that your motion for directed
17 verdict on the basis of venue is that the State has not
18 even proven by legitimate inference...

19 Mr. Barr: No sir.

20 The Court: Whether or not that is a reasonable
21 doubt burden or not as case law indicates it is not, but
22 you are arguing that the State has not established the
23 location of the offense, whether that's termed venue or
24 otherwise, by any weight of evidence. Is that correct?

25 Mr. Barr: That's it, Judge.

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1 The Court: Alright, Ms. Barr, how about the venue
2 issue? As far as directed verdict is concerned?

3 Ms. Barr: Judge, of course, in the case that I
4 cited in chambers yesterday, State vs. Brisbon, states
5 the proposition that the question of venue where the
6 State raises evidence, even if it is a slight degree of
7 evidence, that is sufficient, that case also stands in
8 proposition of venue in a criminal case cannot be
9 affirmatively proved, if its sufficient evidence in the
10 record from which it can be inferred that the venue
11 happened, that the crime happened in a certain venue.
12 Judge, also the case also determines that it is not
13 appropriate or it's not good law in South Carolina, for
14 the Court to charge that the State is required to prove
15 venue in a criminal case beyond a reasonable doubt and so
16 we would certainly think that your honor's comments and
17 rulings earlier are the right ones, your honor.

18 The Court: Alright, there is a case called State vs.
19 Henderson, it's in the 1980's, it's a Court of Appeals
20 case, it overrules that only in the sense that venue is
21 no longer jurisdictional, the premise of how you have to
22 prove venue is the same. It says where the crime is
23 committed is a question of fact to be determined by the
24 finder of fact, not by the appellate court on review, and
25 that's what I mentioned earlier, that's what I'm

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1 struggling with, you have a Supreme Court case 7 to 10
2 years later, that says that argument of venue must be
3 proved beyond a reasonable doubt lacks validity. I'm
4 going to have to go with the Supreme Court case that Mr.
5 Barr, that's why I see what you are saying because there
6 is some conflict of course, the Supreme Court has the
7 final say on that issue as far as current case law is
8 concerned. There is a case from 1956 called State vs.
9 Gregg, that says where the record discloses no
10 possibility of prejudice to the Defendant, justice
11 requires liberality in the application of the rule and
12 that rule being that venue need not be affirmatively
13 proved if there is sufficient evidence from which it can
14 be inferred, that evidence, though slight, that venue has
15 been properly proved. That certainly may be some
16 grounds for examination at a later time, but what I am
17 required to do is go by the current law. Having said
18 that Mr. Barr, I am still not entirely sure what I'm
19 going to do as far as a charge on the location of the
20 crime is concerned. I don't think I can tell the jury
21 that venue or place of the crime has to be proven beyond
22 a reasonable doubt, because the fact in State vs.
23 Brisbon, the Supreme Court says that that would be an
24 improper charge. Let me ask you this, how long, in your
25 motions, Mr. Barr, even though well stated or denied, Ms.

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1 need Ms. Dollard. Ms. Barr is the jury discharged for
2 the week?

3 (Jury Deliberations Begin 12:49)

4 Ms. Barr: Yes sir.

5 The Court: I can tell Miss Dollard that then?

6 Ms. Barr: Yes sir.

7 The Court: How do they pay jurors here by check or
8 by mail.

9 Ms. Barr: I think they mail a check.

10 The Court: Unfortunately Miss Dollard, I don't want
11 you to think we are wasting your time, but the law
12 requires you wait while they deliberate, I tried a case
13 in Greenville county last month and we had two alternates
14 and we lost two jurors the first half of the first day so
15 both alternates served.

16 The Court: Alright, everybody can stand at ease and
17 I wanted to say in advance to Ms. Barr and Mr. Barr I
18 think you did an excellent job trying the case and I
19 appreciate your efforts and I appreciate your following
20 the rules.

21 Ms. Barr: Thank you, you honor.

22 Mr. Barr: Thank you Judge.

23 (Verdict Reached 2:11 p.m.)

24 The Court: Alright I think the jury has reached a
25 verdict, and I'm going to direct everyone in the

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1 courtroom whether or not you have any affiliation in this
2 case at all to maintain complete silence when the verdict
3 is read and of course that would include any what might
4 even be remotely considered an outburst. In other
5 words, if everyone could continue to show the form that
6 you have shown throughout the trial and maintain silence
7 when the verdict is published. Alright, Ms. Barr is the
8 State ready?

9 Ms. Barr: We are ready your honor.

10 The Court: Mr. Barr?

11 Mr. Barr: Yes sir, Judge.

12 The Court: Alright, you can bring in the jury.

13 (The jury is brought back into the courtroom 2:12 p.m.)

14 The Court: Alright, madam forelady, I understand
15 the jury has reached a verdict?

16 Madam Forelady: Yes sir.

17 The Court: Is the verdict unanimous?

18 Madam Forelady: Yes sir.

19 The Court: Alright, please hand it to Miss
20 Williams.

21 (Verdict handed to Ms. Williams)

22 The Court: Alright, please publish the verdict.

23 Miss Williams: Will the Defendant please stand.

24 State vs. Robert Troy Taylor, as to the charge of

25 Kidnaping, we the jury unanimously find the Defendant

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1 guilty. As to the charge of Criminal Sexual Conduct with
2 a minor, second degree, we the jury unanimously find the
3 Defendant guilty. If those are your verdicts, so say
4 you all, please let it be known by raising your right
5 hands.

6 The Court: Alright, thank you Mr. Barr and Mr.
7 Taylor, you can have a seat. Mr. Barr, does the
8 Defendant desire to poll the jury?

9 Mr. Barr: Yes sir.

10 The Court: Alright, Miss Williams.

11 (JURY IS POLLED)

12 The Court: Alright, let the record reflect the
13 jury was polled and each of the individual jurors
14 confirmed his or her verdict. Mr. Barr, before the jury
15 is discharged, is there anything further from the
16 defense? Before the jury is discharged.

17 Mr. Barr: No sir.

18 The Court: Alright, Ms. Barr?

19 Ms. Barr: No, your honor.

20 The Court: Alright, would the attorneys approach
21 please. Alright, ladies and gentlemen of the jury, that
22 would conclude your services for the trial of this
23 particular case and also it concludes your service this
24 week. The job that you have performed was certainly not
25 an easy job to perform. The judicial system that we have

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1 would not be able to survive without folks like you who
2 are ready, willing and able to serve as jurors. The only
3 thing that I can tell you is the community of
4 Williamsburg county thanks you, the State of South
5 Carolina thanks you and I certainly do thank you. If you
6 ever find yourself in a situation where you are a
7 Plaintiff or a Defendant to a civil suit or a Defendant
8 or a victim in a criminal case, I know that you would
9 want to make sure that if you walked through the
10 courthouse door ready to try your case, that that jury
11 box is going to be occupied by someone or by 12 people
12 who would be prepared to give full attention to both
13 sides and to render a verdict that spoke the truth and I
14 think you've done that in this case. No one can take
15 issue with the verdict that you reached in this case and
16 I will tell you this, in a few moments we will get into
17 some post-trial matters including the sentencing in this
18 case, and if you would like to depart the courthouse, you
19 can do so. If you would like to stay you can do so. I
20 will tell you that now you can discuss this case with
21 anyone you want to discuss it with, that means of course,
22 among yourselves, friends, family or with anyone else.
23 However, if at any time, including today or at any time
24 after today if someone approaches whether or not they are
25 connected with this case or not, if they approach you and

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1 want to discuss this case with you, you can do that, but
2 if you do not want to discuss the case with anyone, you
3 tell that person that you don't care to discuss it. Now,
4 if that person persists in discussing the case with you
5 just simply politely get that person's name and then you
6 can let Miss Williams know and she will let me know
7 because the province of the jury is not to be invaded,
8 having said that, you can discuss the case with whom you
9 would like to discuss it, but you don't have to. At
10 this time ladies and gentlemen, you are discharged from
11 the jury service this week, you do have an exemption for
12 jury service for the next three calendar years, that only
13 applies to circuit court, it doesn't apply to Federal, I
14 got a Federal jury summons myself last month and it does
15 not apply to magistrate or municipal court. We do thank
16 you for your service. Again, you can depart the
17 courtroom if you would like or you can remain in the back
18 or wherever you would like to sit and observe the
19 procedures further, but your services as jurors for this
20 week has concluded and we thank you very much.

21 Miss Williams: On behalf of the clerk's office to
22 those of you who need certificates, the Bailiff Ms. Canty
23 has them in the back, if you work and need something to
24 show that you served this week, Ms. Canty has those forms
25 in the back.

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1 The Court: Alright, Mr. Barr, does the Defendant
2 have any motions or would you like additional time?

3 Mr. Barr: Pardon me.

4 The Court: Would you like to make your motions now?

5 Mr. Barr: Yes sir. Your honor, based on the record
6 and based on the objections that we made, and with
7 respect to the jury's verdict at this time, we would
8 respectfully move for a new trial. Our position at this
9 time is that there was insufficient evidence for the
10 jury's verdict and we would therefore move for a new
11 trial.

12 The Court: Alright, your motion for a new trial
13 would be based on the insufficiency of the evidence?

14 Mr. Barr: Yes sir.

15 The Court: Alright, your motion is respectfully
16 denied. I think you have reserved your arguments, I
17 believe unless you want to restate those just to protect
18 yourself on the NCIC material, the place of the crime
19 charge and any other trial issues that if you want to
20 redo those fine, I won't disturb you from protecting the
21 record, but if you think that you stated them
22 sufficiently, then I will accept your motions as made and
23 I will deny your motion for a new trial.

24 Mr. Barr: Alright.

25 The Court: Thank you. Alright, is the State

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1 prepared to move forward with sentencing at this point?

2 Ms. Barr: Your honor the State is prepared to move
3 forward.

4 The Court: Alright, if you would please just state
5 for the record please who was present and who is going to
6 want to speak, of course, Mr. ~~VICTIM~~ here is the victim,
7 I believe Mr. Barr is going to want to be heard because
8 he has presented you with a motion, along with these
9 other written motions earlier to quash the notice of the
10 state's intention to seek life without parole and Mr.
11 Barr I will allow you to be heard at the appropriate
12 time.

13 Ms. Barr: Judge, may I please the Court?

14 The Court: Yes ma'am.

15 Ms. Barr: Your honor, on or about March 15, 2007,
16 the State pursuant to Section 17-25-45 of the South
17 Carolina Code of Laws served the Notice of Intent to Seek
18 a Sentence of Life without Parole, in the event that the
19 Defendant was convicted of either offenses that he was
20 indicted for, both of those offenses, specifically
21 Criminal Sexual Conduct, with a minor in the second
22 degree as well as the Kidnaping charge are violent crimes
23 and they are considered most serious offenses as defined
24 by the statute that I recited earlier. Your honor, the
25 notice was properly delivered upon the Defendant through

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1 his attorney as well as if any person who was served as
2 required by law on the Defendant while he was an inmate
3 in the Williamsburg County Detention Center, so I am
4 going to hand the Court the original Notice of Intent to
5 Seek Life without Parole, which contains a Certificate of
6 Service, as well as a Proof of Service, that it was
7 delivered to the Defendant according to the statute.

8 The Court: Alright, the information handed to me
9 states that the Notice of Intention to Seek a Sentence of
10 Life without Parole, dated March 15, 2007 and references
11 S.C. Code section 17-25-45 and states that the State
12 intends to rely upon the Defendant's prior conviction of
13 criminal sexual conduct with a minor, in the second
14 degree, the statutory enhances punishment, the indictment
15 and sentencing sheet for that matter which was in the
16 Georgetown County Court of General Sessions is attached
17 and that was the indictment that stated on or about
18 August 5, 1999 through August 7, 1999, the Defendant did
19 willfully commit the crime of criminal sexual conduct
20 with a minor in that he did sodomize **VICTIM** who
21 was 12 years of age at the time. The sentencing sheet
22 reveals that the Defendant entered a plea of guilty on a
23 waiver of presentment and that it was characterized on
24 the sentencing sheet as a most serious offense and the
25 sentence given was eight years to a state department of

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1 corrections, suspended to five years and probation for
2 three. Also, handed to me a Proof of Service on Robert
3 Troy Taylor signed someone with the Sheriff's Department
4 that the Notice of Intention to Seek Sentence of Life
5 without Parole, was delivered to the Defendant on March
6 15, 2007 and certificate of service by mail indicating
7 that on that same date a notice was mailed to Mr. Barr.
8 Alright, Mr. Barr would you like to be heard on this
9 issue, do you seek to quash it on service matters or
10 whether or not this was qualified for life without parole
11 or how would you like to state your position on that?

12 Mr. Barr: Judge, our position is that this offense
13 does not qualify for life without parole. We don't have
14 a problem with the service, but our position was that
15 this does not qualify for life without parole.

16 The Court: Alright, Ms. Barr would you care to
17 respond to that?

18 Ms. Barr: Your honor, pursuant to section 17-25-45
19 in the subpart that I commented on initially for a most
20 serious offense a person must be sentenced to a term of
21 imprisonment for life without possibility of parole if
22 that person has one or more prior convictions for one
23 serious offense and it talks about out of state
24 convictions and federal convictions and then it goes on
25 to define what is meant by a most serious offense.

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1 Judge, I am looking at subsection one and it talks about
2 criminal sexual conduct with minors, except where
3 evidence is presented in a criminal proceeding in the
4 court after the conviction leaves a specific finding in
5 the record that the conviction obtained in this offense
6 is criminal sexual conduct where the victim is younger
7 than the actor is contemplated in CSC with a minor second
8 degree statute. Judge, your honor has the benefit of the
9 transcript from the conviction back in 2006 regarding
10 this victim and this Defendant for a separate crime that
11 happened in Georgetown county, which is obvious from an
12 investigation of the facts by the Assistant Solicitor it
13 was not a continuing relationship and that it was a
14 situation where it wouldn't even matter because of the
15 age and the different crimes, so based on his conviction
16 now for criminal sexual conduct with a minor in the
17 second degree and based on his prior conviction, we
18 believe that count one qualifies as a most serious
19 offense as stated in statute.

20 The Court: You are talking about count one being
21 the first conviction?

22 Ms. Barr: Count one in this particular case,
23 criminal sexual conduct and based on his prior conviction
24 of CSC with a minor second degree, it qualifies as a most
25 serious offense for life without parole, in addition,

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1 statute 17-25-45 also compensates for Kidnaping as most
2 serious offense and could also carry the sentence of life
3 without parole. Thank you.

4 The Court: Mr. Barr, is it your argument that the
5 earlier conviction, the Georgetown county conviction,
6 makes it such that these two convictions one for
7 Kidnaping and one for criminal sexual conduct with a
8 minor in the second degree in this incident we tried,
9 which is it that makes this not qualified for life
10 without parole, is it Georgetown county?

11 Mr. Barr: The date of the offense in the
12 Georgetown county proceedings.

13 The Court: Yes sir. It was after this incident?

14 Mr. Barr: Yes sir.

15 The Court: The statute is divided into two parts,
16 one is in the hard bound volume of Title 17, 17-25-45
17 states that notwithstanding any other provisions of law
18 except in cases in which the death penalty is imposed,
19 upon a conviction for a most serious offense as defined
20 by this section, a person must and that's a mandatory
21 statement, be sentenced to a term of imprisonment for
22 life without the possibility of parole if that person has
23 one or more prior convictions, a most serious offense.
24 The supplement states that as used in this section, a
25 most serious offense means, and it lists what appears to

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1 be two dozen or more, one of which is section 16-3-655
2 criminal sexual conduct with minors, except where
3 evidence is presented at criminal proceedings and the
4 court after the conviction makes a specific finding on
5 the record that the conviction obtained from this offense
6 resulted from consensual sexual conduct where the victim
7 was younger than the actor. Also it includes in that
8 list, the offense of Kidnaping, in section 16-3-910.
9 Mr. Barr, I don't detect anything in the statute or in
10 the case citations which I have read that talks about the
11 fact that this statutory scheme would not apply because
12 at the time of the offense as it compares to the date of
13 convictions were in. So, if you've got any case
14 citations that would support that, I don't know that they
15 exist, but certainly you made that argument, I deny your
16 motion to quash the notice and of course, if you want to
17 make a motion for reconsideration because you detected a
18 case on that regard you can certainly do that, but I have
19 looked for it myself just in case the situation arose but
20 I do not find it, so I would deny your motion to quash.
21 Alright, in order to maintain comfort for everyone, Mr.
22 Barr, would you and Mr. Taylor if you would like, can
23 continue to stand, while the defense, while the State
24 presents for the record or you can have a sit or remain
25 standing, whichever you see fit to do. Ms. Barr, you can

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1 at this point or he can speak for himself, however you
2 want to handle it.

3 Mr. Barr: Your honor, he has indicated that he does
4 want to address the court.

5 The Court: Alright, just for the record, you are
6 Robert Troy Taylor, is that correct.

7 Defendant Taylor: Yes sir. Yes sir.

8 Defendant Taylor: I don't really understand what
9 happened today to be quite honest with you and I
10 understand that you have a job to do and I see that
11 you've done it, I guess. I am not guilty of this and
12 only two people know that, and one of them is there and
13 one of them is here. I am not guilty. I feel very
14 sorry for any harm or hurt or anything that might have
15 happened to VICTIM because I care about VICTIM and have since
16 he was a young child. I counseled VICTIM whenever him and
17 his mother had problems, his mother stood by me when
18 these accusations were made in the first place, by other
19 folks, well from my cousin, you are correct in hearing
20 about it through my cousin. When I was young, there was
21 playing doctor that happened between cousins, that was
22 the extent of it. I became a Christian when I was 15
23 years old and nothing happened past that. The lawyer
24 that I had in Georgetown county said because I was a
25 pastor, he could not give me a fair trial, however, he

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1 told me to wait the three years and which I wait and lo
2 and behold two years after the first incident was even
3 said anything about it, that's when VICTIM came and VICTIM
4 said that something had happened in Georgetown county.
5 This thing that you tried in court today, which didn't
6 happen supposedly after all because now you've tried me
7 in Williamsburg county. But at that point in time,
8 nothing was said about a trip to Huntington Beach in
9 which we were unable to get our witnesses here today
10 which we couldn't help, we had two witnesses that were
11 ready to testify today to the fact that they were not
12 there, that what he stated was not true and another one
13 that was there alongside my nephew who said he woke up
14 seeing me on the outside, no one around me except for my
15 nephew and my son in the sleeping bag with me. I think
16 it would have made a tremendous difference but we
17 couldn't get them here. I couldn't take the stand and I
18 understand, I mean I think I understand very clearly the
19 fifth amendment right, and I understand that, however, I
20 have appealed to the state and my lawyer, the ex-lawyer
21 has admitted that he did not do the job that he was
22 supposed to do and I am going back on PCR. According,
23 whatever, I can't think of the right phrase now, but
24 concerning the other incident, not the one we are talking
25 about now, but the one that VICTIM says happened at

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1 Huntington Beach, there are two grown witnesses that have
2 come forward that testified, one with a diary, that
3 testified that I was not even there at all working with
4 the youth. In fact, I was at her home, refinishing her
5 house, fixing her roof and fixing her floor. Both of them
6 ready to testify. My ex-wife was supposed to stand up
7 and testify but she obviously didn't. I don't know why, I
8 don't think she wanted to put herself in that trailer
9 because it doesn't make a whole lot of sense to be in a
10 single wide trailer and me get into a shower with a young
11 man and her be 15, I can understand why she didn't step
12 forth. Your honor, I know you have nothing you can do
13 about it, I don't mean to sound angry but this is my
14 life, and I do have two young children that have been
15 kept from me for over a year now. I have a son that I
16 adopted from Romania sitting right back there and he's
17 not going to have his daddy anymore. He'll be able to
18 come and play sorry or play cards or play scrabble on the
19 weekends for four hours and I understand your hands are
20 tied. But there are two people in here that know the
21 truth. Two of us, VICTIM. It's a little late to do
22 anything about it.

23 The Court: Direct your comments to me.

24 Defendant Taylor: I apologize and I apologize to
25 you, I do remember you saying that sir. But there's two

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1 folks that know the truth here. Two. The only thing
2 that I can ask and I don't know if you can even answer
3 this or I need to ask my lawyer is this. If in fact this
4 PCR does go forward, and that case is overturned and we
5 are able to go back and fight, what does that mean for
6 this case at that point? Because in that case, I am
7 going to do everything in my power to get right back here
8 and to retry this case so that I can sit there and let my
9 voice be heard, which is all I've wanted for three years
10 now, almost four years, is for my voice to be heard
11 period. I am not an evil man. I did not hide behind
12 the cloak of anything, I was born again when I was 15
13 years old. I sat in that room right back there
14 worshiping the Lord, I sat right there and worshiped the
15 Lord and I worship him right now, I praise his holy name.
16 I will accept whatever happens here as his will, but I
17 will not stop fighting. I want to get in that chair and
18 I want those 12 people to hear the truth. I wasn't able
19 to do that. I wasn't able to step up there and tell the
20 truth. I wasn't able to say a thing. My other lawyer
21 tied my hand the last time. Mr. Barr, at least, and he
22 told me he said you may want to consider the plea that
23 was offered, and I said Mr. Barr, I am an innocent man.
24 He said, I don't know how we are going to give a good
25 fight here, I said I'm an innocent man and there has to

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1 come a point where I stand up, where I stand up and I
2 fight. It's correct in saying our relationship continued
3 through the years. It did continue. The last time I
4 remember seeing the VICTIM family we all were in line at
5 a Coca Cola Museum in Atlanta and the boys all stood
6 around me and my son, and my children as we stood in line
7 and this would have been in 2004, and we all hung out
8 together. It doesn't seem like the attitude of a young
9 man who says that I molested him to stand in line with me
10 and to hang out with me and to try different coca cola
11 products and none of that could come out, because I had
12 to sit there. My nephew told the truth. My nephew told
13 the whole truth. The fact is I slept that night, with my
14 son who was in my sleeping bag, who was 4 years old, or 3
15 and ½ years old crying, he was cold and it was his first
16 time out camping. My nephew slept beside me and we woke
17 up that morning and we went and the kids played war and
18 we came out and that is it. I have never, ever had anal
19 sex, ever period. I don't desire to have anal sex, and I
20 do not desire young boys nor men in general period. I
21 love my wife very much, very much and I still love
22 Allison. I am not a homosexual and I am definitely not a
23 predator. I know your hands are tied. I feel very sorry
24 for my family. I feel very sorry for the people of
25 Murrells Inlet, because they are missing out on a good

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1 citizen. I am not this monster I've been made to be and
2 you can smirk now if you'd like to, but the fact of the
3 matter is, there is no smirking. The truth did not win
4 out today, justice was not served today. It was not. I
5 really don't know what else to say, I guess I'm at a
6 loss.

7 The Court: Mr. Taylor, you mentioned one thing
8 about the Georgetown county incident and I want to make
9 sure that I understand the transcript as I have read it.
10 Judge Cottingham conducted a relatively exhaustive plea
11 process and he asked you with regard to the incident
12 involving Mr. *VICTIM* in Georgetown county were you guilty
13 and you said I am guilty.

14 Defendant: Yes sir.

15 The Court: Do you agree that you said that during
16 the plea?

17 Defendant: I will agree that I said that your
18 honor. I have a copy of my PCR on my desk. I know
19 that's nothing that you need.

20 The Court: I just want to make sure that you said

21 Defendant: I did absolutely say it and I cannot
22 deny that I said it. Did I say it under duress, I think
23 he even asked me if I did or not, I was told my lawyer
24 you say yes sir and that's it, don't say another thing.
25 You look him in the eyes and say yes sir which is what I

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1 did, until I was given the opportunity to speak from my
2 heart in which I looked at the Judge and I looked at Bo,
3 who was the prosecutor and I said I am not this man that
4 you say I am. When my heart was allowed to speak, I
5 spoke it and I can only hope with the new witnesses and
6 everything else I will have at least a chance to be heard
7 period. I've got witnesses that are willing to step
8 forward at this point, once we finally got a date, we
9 were never even given a date. Just like this case, if
10 you look through all the paperwork, you will see how the
11 dates kept changing, we were never given a date on the
12 last one. See, supposedly this camping trip happened in
13 February or April, then it turns into November. The
14 other case he talked about happened at different times,
15 we never did get a date until about this time last year
16 while I was sitting at Evans in Bennettsville and I got a
17 piece of paper from the lady who works in her place in
18 Georgetown, which said August 5, 6, and 7th. First time
19 we've ever been told a date. My lawyer never even had a
20 date, never talked to the first witness and the people
21 who have come forward were on my witness list, but he
22 never did the job that he was supposed to do. It's just,
23 I know your hands are tied, there is nothing you can do,
24 I don't mean to come across as angry, but this is my life
25 and I do stand firm, I did say what you asked me, I did

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1 plead guilty, I cannot say I didn't, I am fighting
2 desperately, the only option I have is the PCR process
3 sir.

4 The court: Thank you Mr. Taylor. Mr. Barr, anyone
5 else who would like to speak for the Defendant?

6 The Court: Your name sir.

7 Marius Taylor: Marius Taylor.

8 The Court: Ok, how do you spell your first name?

9 Marius Taylor: M-A-R-I-U-S.

10 The Court: Alright, sir Mr. Taylor if you would be
11 mindful of the fact to direct your statements to me and
12 not to anyone to your right, do you understand that?

13 Marius Taylor: Yes sir.

14 The Court: Alright, I'll be glad to hear from you.

15 Marius Taylor: I just want to thank you for
16 everything Judge. I want to especially thank Mr. Barr
17 who did a good job. I just want to tell a couple of
18 things about my dad. I am adopted, it was a long process
19 of adoption. Thank God I finally got here after almost
20 four years. When I got here my life was horrible and
21 they brought me here and gave me everything I needed.
22 Love, which is the most important thing and most of all a
23 family. I lived with him and I know what kind of man he
24 is, no matter what you are going to say, the jury is
25 going to see, nothing will ever change my mind about

1 matter what it does to you. He said Uncle Gary I can't
2 I'll never see my children graduate from high school if I
3 don't because they've already promised me. So this time,
4 Troy tried to stand on what was right, on what was true,
5 the first time he lied, the second time he tells the
6 truth, he can't win in this country. My son is an
7 anarchist, I didn't raise him that way, but I gotta honor
8 my children. Thank you sir.

9 The Court: Alright. Alright anything else from the
10 state before I pronounce sentencing?

11 Ms. Barr: No, your honor.

12 The Court: Alright Mr. Taylor, according to the
13 provisions of the South Carolina Code Section 17-25-45,
14 the convictions that have come forth today, those being
15 Kidnaping and Criminal Sexual Conduct with a minor, in
16 the second degree, pursuant to that statute, I will
17 recite it in pertinent part, it says upon conviction for
18 a most serious offense, as defined by this section after
19 being convicted of another most serious offense, a person
20 must be sentenced to a term of imprisonment for life
21 without the possibility of parole. As the jury has
22 pronounced its verdict of these two offenses, both of
23 which are most serious offenses in the eyes of the law,
24 and since the prior conviction was a most serious offense
25 conviction, pursuant to the statute for the offense of

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1 Criminal Sexual Conduct with a minor in the second
2 degree, the sentence of the court is that you committed
3 to the State Department of Corrections for the balance of
4 your natural life and likewise the sentence for
5 Kidnaping, you are committed to the State Department of
6 Corrections for the balance of your natural life. Those
7 two sentences will be consecutive and Mr. Barr will, he
8 indicated will be filing a Motion for Reconsideration of
9 sentencing so that he can more fully set forth his
10 position to inapplicability of this code section to these
11 proceedings. Of course, Mr. Barr, that does not prevent
12 you from filing any other types of similar motions that
13 are permitted by the Rules of Procedure.

14 Mr. Barr: Judge, did I understand you to run the
15 sentences consecutively?

16 The Court: Yes sir. To the extent that makes a
17 practical difference, but that is something to be
18 examined on reconsideration as well but each one in the
19 context of this statute, must stand on its own. So
20 that's why the sentence was pronounced in that fashion.

21 Ms. Barr: Thank you, your honor.

22 The Court: Mr. *VICTIM*, I wish you luck, I wish you
23 and your family luck. Mr. Taylor, I wish you luck and I
24 wish you and your family luck. I commend both attorneys
25 for the job you did in the courtroom and the preparation

1 for this trial. I think Mr. Taylor that you had
2 excellent representation as did the State of South
3 Carolina. I would request that the folks, if Mr.
4 *VICTIM*'s family on my right hand side of the courtroom,
5 if you would depart from the courthouse first and I would
6 suggest to you, I just don't want there to be any
7 hereafter outside of this courtroom. The sheriff is in
8 the courtroom, he will maintain order but there needs to
9 be some order on the premises and I will leave it to you
10 fine folks on both sides to make sure that doesn't occur.
11

12 Mr. Taylor: Would you at least let me tell my
13 family goodbye.

14 The Court: That will be up to these two gentlemen
15 here.
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STATE OF SOUTH CAROLINA)
)
 COUNTY OF WILLIAMSBURG)
)
 The State,)
)
 Plaintiff,)
)
 vs.)
)
 Robert Troy Taylor,)
)
 Defendant.)

IN THE COURT OF GENERAL SESSIONS
 THIRD JUDICIAL CIRCUIT
 INDICTMENT NO.: 06-GS-45-176

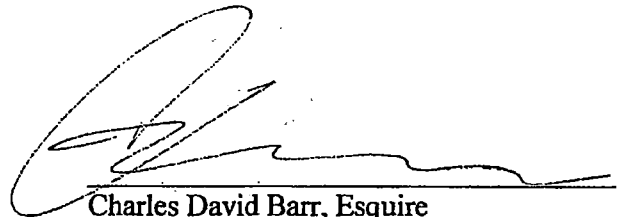
NOTICE OF MOTION AND
 MOTION TO RECONSIDER

FILED
 07 JUL 20 AM 10:17
 CLERK OF COURT
 KINGSTREE, S.C.

NOTICE IS HEREBY GIVEN that the undersigned attorney for the Defendant will move before the Circuit Judge George M. James, within ten (10) days of the date hereof or as soon thereafter as counsel may be heard, for reconsideration of the Courts ruling on July 12, 2007 that the Defendant's conviction for a most serious offense requires mandatory imposition of life without the possibility of parole and for the reconsideration of the Courts decision to impose consecutive sentences of the offenses of CSC 2nd and Kidnapping.

Kingstree, South Carolina

July 20th, 2007



Charles David Barr, Esquire
 Attorney for the *Defendant*
 319 W. Main Street
 Kingstree, South Carolina 29556
 Telephone: 843-355-8000
 Facsimile: 843-355-8003

A CERTIFIED TRUE COPY

Carolyn F. Williams
 CAROLYN F. WILLIAMS
 CLERK OF COURT
 WILLIAMSBURG COUNTY

STATE OF SOUTH CAROLINA)
COUNTY OF WILLIAMSBURG)
The State,)
Plaintiff,)
vs.)
Robert Troy Taylor,)
Defendant.)

IN THE COURT OF GENERAL SESSIONS
THIRD JUDICIAL CIRCUIT
INDICTMENT NO.: 06-GS-45-176

CERTIFICATE OF SERVICE

07 JUL 20 AM 10:17
CLERK OF COURT
WILLIAMSBURG, S.C.

FILED

I HEREBY CERTIFY, that the NOTICE OF MOTION AND MOTION TO RECONSIDER has been served, by mailing a copy to the attorneys of record, in the United States mail, with sufficient postage affixed thereto, addressed to them at their address as shown below, on the 20th day of July 2007.

Ronnie A. Sabb, Solicitor
Third Judicial Circuit
125 West Main Street
Kingstree, South Carolina 29556

Kimberly Barr, Assistant Solicitor
Third Judicial Circuit
125 West Main Street
Kingstree, South Carolina 29556

Kingstree, South Carolina

July 20, 2007

Gloria Wright
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A CERTIFIED TRUE COPY
Carolyn F. Williams
CAROLYN F. WILLIAMS
CLERK OF COURT
WILLIAMSBURG COUNTY

STATE OF SOUTH CAROLINA)
)
 COUNTY OF WILLIAMSBURG)
)
 The State,)
)
 Plaintiff,)
)
 vs.)
)
 Robert Troy Taylor,)
)
 Defendant.)

IN THE COURT OF GENERAL SESSIONS
 THIRD JUDICIAL CIRCUIT
 INDICTMENT NO.: 06-GS-45-176

**AMENDED
 NOTICE OF MOTION AND
 MOTION TO RECONSIDER**

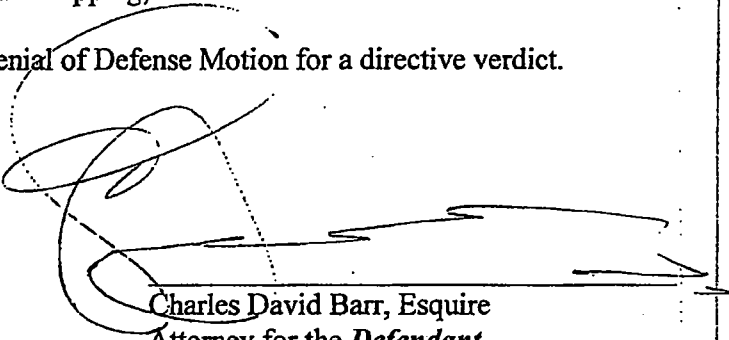
FILED
 07 JUL 20 PM 2:18
 CLERK OF COURT
 KINGSTREE, S.C.

NOTICE IS HEREBY GIVEN that the undersigned attorney for the Defendant will move before the Circuit Judge George M. James, within ten (10) days of the date hereof or as soon thereafter as counsel may be heard, for the following relief:

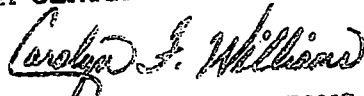
- 1) Reconsideration of the Defense Motion for a new trial;
- 2) Reconsideration of the Courts ruling on July 12, 2007;
- 3) Reconsideration of the Courts decision to impose consecutive sentences of the offenses of CSC 2nd and Kidnapping; and
- 4) Reconsideration of the denial of Defense Motion for a directive verdict.

Kingstree, South Carolina

July 20th, 2007


 Charles David Barr, Esquire
 Attorney for the *Defendant*
 319 W. Main Street
 Kingstree, South Carolina 29556
 Telephone: 843-355-8000
 Facsimile: 843-355-8003

A CERTIFIED TRUE COPY



CAROLYN F. WILLIAMS
 CLERK OF COURT
 WILLIAMSBURG COUNTY

STATE OF SOUTH CAROLINA)

COUNTY OF WILLIAMSBURG)

The State,)

Plaintiff,)

vs.)

Robert Troy Taylor,)

Defendant.)

IN THE COURT OF GENERAL SESSIONS
THIRD JUDICIAL CIRCUIT
INDICTMENT NO.: 06-GS-45-176

CERTIFICATE OF SERVICE

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July 20th, 2007

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Carolyn F. Williams
CAROLYN F. WILLIAMS
CLERK OF COURT
WILLIAMSBURG COUNTY

STATE OF SOUTH CAROLINA)
)
 COUNTY OF WILLIAMSBURG)

IN THE COURT OF GENERAL SESSIONS

THE STATE,)

PLAINTIFF,)

v.)

ROBERT TROY TAYLOR,)

DEFENDANT.)

TRANSCRIPT OF RECORD
 C/A #: 2006-GS-45-176

MOTION HEARING

WILLIAMSBURG COUNTY COURTHOUSE
 September 27, 2007

BEFORE:

HONORABLE GEORGE C. JAMES, PRESIDING JUDGE.

APPEARANCES:

ASSISTANT SOLICITOR RONNIE SABB, ESQUIRE
 ASSISTANT SOLICITOR KIMBERLY BARR
 Attorneys for The State

CHARLES DAVID BARR, ESQUIRE
 Attorney for Defendant

TAKEN BY MELISSA R. SINGLETARY
 CERTIFIED VERBATIM REPORTER

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Certificate of Service

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HEARING

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1 THE COURT: This is of course State of South Carolina v. Robert
2 Troy Taylor. On July 12th, 2007, Mr. Taylor was found guilty by a jury of kidnaping
3 and criminal sexual conduct with a minor of the 2nd degree ... that's correct, isn't it,
4 Mr. Barr?

5 MR. BARR: Yes, sir, Judge.

6 THE COURT: And I sentenced him to life without parole pursuant to
7 Section 17-25-45 and Mr. Barr timely filed and sent to me various Motions and
8 today's Hearing is held for the purposes of hearing Mr. Barr's Motions. I'll be glad to
9 hear from you, Mr. Barr, in whatever order you'd like to go.

10 MR. BARR: May it please the Court, Judge, I ... first of all, I'd like to
11 take this opportunity to thank the Court as well as opposing counsel and everyone
12 else who's associated with this process for taking a Friday morning to come in here
13 and hear us talk some more. Your Honor, of course in addition to the items that were
14 set forth in our amended Motions for Reconsideration, I think there was some issue
15 as to the Defendant was also sentenced to consecutive sentence on the kidnaping
16 charge.

17 THE COURT: Yes, sir.

18 MR. BARR: And that was one of the items that we wanted the Court
19 to take another look at, that is whether or not under the circumstances the ... the
20 Defendant should have been sentenced ... should have gotten a concurrent sentence
21 or perhaps should have gotten concurrent sentence as opposed to a consecutive
22 sentence.

23 THE COURT: Right.

24 MR. BARR: And Your Honor, I ... I would just simply start with that
25 issue and of course realizing that ... that it is, certainly sentencing is well within the

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1 clearly defined province as established by ... by every precedent we know it is within
2 the sound discretion of the trial judge and Your Honor, of course having heard the
3 facts and circumstances of this case, we would just again take the position that ... that
4 ... that ... and it would certainly be an issue involving perhaps to some degree due
5 process, fundamental affairs, cruel and unusual punishment, but at the end of today
6 we would certainly hope the Court would, given the consecutive nature of the
7 sentencing on the kidnaping and the conviction of second degree criminal sexual
8 conduct. The next item, Judge, I think that there's some question as to the request to
9 reconsider the request for a directed verdict. Of course, the issue there would have
10 been those items that were actually set forth during the course of the trial and ... and I
11 believe that the record may be adequately clear for review purposes on those matters
12 and Judge, I would not have noted at the time that we were making a motion for
13 reconsideration that it would be necessarily appropriate, may very well be redundant
14 to try to go back to those things. So we would then move on to the ...

15 THE COURT: The basis for those Motions were generally taking the
16 evidence in the light most favorable to the state there was insufficient evidence as a
17 matter of law for the jury to find Mr. Taylor guilty.

18 MR. BARR: Yes, sir, particularly on the issue as I recall of ... of
19 venue and I believe that there was quite a bit of discussion ...

20 THE COURT: Right.

21 MR. BARR: ... on both sides and all of which I think that the record
22 clearly shows what the positions were there on ... on that issue. And in fact, I think
23 that the evidence on the issue of venue in terms was pretty much confined to the
24 testimony of ... of one witness which would be Officer Rogers. Your Honor, we ...
25 we've also raised an issue concerning I think initially there was a Motion to ...

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1 initially we had a Motion to ... we had a Motion that was addressed to the
2 appropriateness of the State's Notice to Seek ... it was a Motion to quash it is what it
3 was. The State's decision to seek life without possibility of parole and I think that
4 that ... at that ... at that time it was an issue which perhaps we didn't talk about as
5 much ... as much about it as perhaps we should have and I do note that it's an issue
6 that ... that ... that one of the central issues in this case as it relates to the conviction.
7 Your Honor, I would respectfully point out that and of course in the section ... one of
8 the things that I have looked at pretty closely as it relates to the appropriateness of ...
9 of the Recidivist Statute is the ... the next Code Section which deals with actually the
10 exceptions of section 17-25-50 which deals with the issue considered closest, the
11 closely connected offenses as one offense and that would just simply be one ... one
12 item that we thought in terms of this particular prosecution that there was some
13 similarities to ... to some issues that ... that we thought, at least the court is very clear
14 about as it relates to prosecution under the Statute. If I recall correctly, the basis for
15 the State's decision to ... to serve Notice was a prior conviction from Georgetown
16 County involving this same Defendant or this same victim, was not actually a
17 conviction but it was a guilty plea involving this same Defendant or same victim for
18 the same offense.

19 THE COURT: Different times.

20 MR. BARR: Different times.

21 THE COURT: The one we tried ... the one we tried here occurred in
22 '98. The one that was tried in Georgetown County occurred about nine months later
23 in '99.

24 MR. BARR: Well, I ... I think that that ...

25 THE COURT: And that one was pled first.

HEARING

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1 MR. BARR: Yes. Well, and of course I'm not going to say different
2 times because quite frankly we're arguing against that because given the time, the
3 sequence and ... and the fact that you're dealing with the same victim, it was my
4 understanding that even the law enforcement officers got confused as to what or
5 where the incident occurred and ... and of course I realize that as far as the indictment
6 is concerned which was the dates that we actually looked at, but I believe even the
7 one, the incident from Georgetown County the Defendant pled guilty to that, the
8 offense having occurred perhaps in November.

9 THE COURT: I believe that's right.

10 MR. BARR: I believe of '99. And this involves August ...

11 THE COURT: I think it was November of '98 and August of '99.

12 MR. BARR: Yes, sir.

13 THE COURT: Are the two alleged offenses.

14 MR. BARR: And of course, Judge, under the circumstances we would
15 certainly take the position that ... that with respect to the parties, with respect to the
16 various allegations surrounding these two events that they ... they certainly could
17 easily be looked upon as one as opposed to two separate incidents.

18 THE COURT: Under 17-25?

19 MR. BARR: Under 17-25. Now, of course, Judge, that still leaves the
20 issue of aside from the 17-25 the appropriate, the application of the Statute, that is
21 the application to consider the Statute and I realize that there has been a number of
22 ... of issues raised concerning the constitutionality of the Statute itself and it would
23 clearly say that under the Supreme Court earlier ruling they pretty much established
24 that on its face that Statute as generally applied would certainly be constitutional so
25 ... but at the same time given a proportion of the criminal sanctions that have been

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1 proposed against this Defendant. We would seriously question the constitutionality
2 of the Statute as well. The other item, Your Honor, would be the Court's ruling
3 which we described in our Motion as a ruling on July 12th, 2007. And Your Honor, if
4 ... if memory serves me correctly, I think that was ... that was the ruling by the Court
5 whereby we requested by way of a Motion in Limine that the Defendant be at least
6 put on notice or specifically informed concerning what convictions and/or prior bad
7 acts he would get impeached with if he took the witness stand. And of course
8 if I recall the Court's ruling was that it would only be after he took the witness stand
9 that he would find out or that you would rule on ... on the ... the application of ... of
10 the prior convictions and/or prior conduct to impeach the Defendant. And certainly,
11 Judge, that in my humble opinion was ... was an issue that severely chilled any intent
12 that we may have had to put the Defendant on the witness stand. Certainly any
13 decision that he may have made to take the witness stand pertaining to this not
14 knowing what his fate would be.

15 THE COURT: Let's talk about that for a moment.

16 MR. BARR: Yes, sir.

17 THE COURT: When you cross examined the victim very, very
18 vigorously a lot of that cross examination or I would say the bulk of that cross
19 examination was directed at what I'm just going to call the Georgetown County
20 incident, the one that Mr. Taylor pled guilty to before Judge Cottingham. Now, you
21 had ... and you were ... you were ... and it was incumbent on you to do it, you had to
22 attack the victim's credibility by going into the Georgetown County incident and
23 would you be telling me that if Mr. Taylor took the stand that Ms. Barr would not
24 have been able to say, hey, he pled guilty to it? After all this back and forth question
25 and answer, challenging the victim's testimony, you're telling me that Mr. Taylor

HEARING

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1 would not have been subject to cross examination on that?

2 MR. BARR: Judge, clearly I think he would have actually have been
3 subject to cross examination and we weren't too much concerned about that. In fact,
4 I won't get into collateral proceedings but as I understand it, there is a ... there is a
5 Post Conviction proceedings that was proceeding at the very time that addresses the
6 circumstances under which the ... the plea in Georgetown was actually made and for
7 that reason while it could have been used as perhaps being potentially devastating
8 because the Defendant could clearly have been asked the pointed question of whether
9 or not he actually pled guilty in Georgetown but then on the other hand, he could
10 have given an explanation concerning that guilty plea. And of course, I don't know
11 that the jury not being deprived of his explanation that could have very well have
12 taken whatever position they would have made regarding whatever weight they
13 would have decided to give to that evidence. So at the end, I think clearly there is
14 cause, there is some consideration on both sides but I think in this particular situation
15 the Defendant would almost have to compel to explain and I think he could have
16 explained exactly the circumstances surrounding the guilty plea in Georgetown but I
17 really don't ... I don't ... I don't think that his having to on cross examination would
18 not have been in his best interest. Judge, I think that's pretty much by way of the
19 Motion, that's pretty much the issue. Thank you, sir.

20 THE COURT: All right. As part of your Motion under Section 17-25-
21 45 and 50, one thing that I want to address as well. I remember when you made the
22 Motion to Quash under the LWOP notice, one of your Motions was over a statute.

23 MR. BARR: Yes, sir.

24 THE COURT: At the time I ruled on that I indicated that in the
25 context of facts of our case that reasoning didn't apply because in my mind these two

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1 incidents November and the August did not occur so closely in time that they should
2 be considered as one incident. One thing that perhaps we did not fully address at the
3 time of the ruling is State v. Gordon which, it was a Supreme Court case that causes
4 a fair amount of people to scratch their head, that's 588SCsd105. And I don't know
5 whether its dicta or whether it is part of the holding, but my conclusion at that time
6 was it was basically a commentary. In that case, the Defendant was convicted of
7 trafficking in crack cocaine and was sentenced to 30 years in prison. The State had
8 requested life without parole because of some prior ... or a prior conviction for a
9 most serious offense. And the Supreme Court said ... if I can find the quote ... "We
10 find the Recidivist Statute was aimed at career criminals, those who have been
11 previously sentenced and then commit another crime, not as those whose recidivist
12 status premise solely upon acts which occurred at times so closely connected in the
13 point of time that they may be considered as one offense." And that's when the
14 Supreme Court said according to this we hold 45 and 50 actually together in any
15 given case. It was my view at that time that these two events did not occur so closely
16 in time to trigger that language. I don't know if Ms. Barr would respond to this. By
17 the way, the Legislature in July of last year tagged on a sentence at the end of
18 subparagraph F of 17-25-45 that to me tells me the Legislature was trying to overrule
19 State v. Gordon. Then we get back into separation of powers ...

20 MR.BARR: Yes, sir.

21 THE COURT: ... but that Amendment to the Statute doesn't apply to
22 this case at all because it was passed well after the alleged incident and well after the
23 Indictment.

24 MR. BARR: Judge, of course, if you remember, we had ... we had
25 quite a bit of discussion about that. Basically, from the standpoint that the

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1 Georgetown County incident was actually ... the Williamsburg County case was
2 actually before it.

3 THE COURT: Yeah, and that takes me to the drug case. The drug
4 cases say for enhancement purposes. I think the case is State v. Waites. But for
5 enhancement purposes it doesn't matter ... you can get tried for the third one first ...

6 MR. BARR: Yes, sir.

7 THE COURT: ... then the other two, the prior two next and you are
8 still ... when you try the next two that occurred before the third ... I know I'm totally
9 confusing everybody now, but the order of offenses does not impact the enhancement
10 impact from the drug case. Ms. Barr, would you like to respond to this first
11 argument that concurrent sentences should have been imposed?

12 MS. BARR: Yes, Your Honor, if I may. May it please the Court,
13 Judge. Obviously this was an appropriate sentence particularly taking into
14 consideration all of the evidence that was presented during the course of the trial.
15 Taking into consideration the victim impact statement as well as the statement
16 regarding prior incident in Georgetown County. Your Honor, given the role that the
17 Defendant played in the lives of his victims, how that role allowed him to access two
18 of his victims and how there were allegations in this case as well as victims in the
19 Georgetown County case that the crimes occurred during church functions. The
20 State given the facts in the Georgetown County case as well as our case, I think
21 certainly is supported by the facts of the case ...

22 THE COURT: Just for the record while we're on that point, would you
23 ... I know the record shows Mr. Barr, and Mr. Taylor, but Ms. Barr, if you would
24 state for the record the folks that are with you. The victim and the parents, if you
25 would state that for the record

HEARING

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1 MS. BARR: Your Honor. If it please the Court. ~~VICTIM~~ is
2 here. His parents Mr. and Ms. are here.

3 THE COURT: All right. So noted for the record. All right. The
4 second point that he raised was I guess was the readdressing the directed verdict
5 motion.

6 MS. BARR: Your Honor, please the Court. To protect the record, the
7 State would first of all take the position that ground two of his Motion for
8 Reconsideration, the law requires we make a specific motion before the Court stating
9 the grounds. On each ground, we have done that, Your Honor. In the event ---
10 Secondly, assuming that is true, it is properly preserved. Judge, we would allege that
11 there is certainly enough evidence from the victim in and of itself that a crime was
12 alleged and in fact had occurred. In addition, I recall that counsel and the Court, in
13 chambers and on the record, heavily discussed the issue involving venue and what's
14 required to prove venue and the Court was satisfied with what the State was required
15 to prove beyond a reasonable doubt. Your Honor, while we recognize defense
16 Motion for a Direct Verdict particularly regarding the issue of, in terms of what
17 statements were required to proof. Your Honor, it is our position that any evidence
18 was enough to have the case submitted to the jury, so I believe that denying the
19 defense Motion for Directed Verdict should stand.

20 THE COURT: How about the argument he makes that the LWOP
21 Notice should be quashed because if these two events were one continuous event for
22 the purpose of recidivism.

23 MS. BARR: Judge, of course, we just take the opposite view. I think
24 when you look at cases that interpret Section 17-25-45, the LWOP Statute, I think it
25 talks about cases where you have sort of a crime spree going on. If you have

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1 someone go and rob one convenience store and then an hour later goes and robs
2 another convenience store, then an hour or two hours later goes and kills somebody.
3 I think that is the continuing course of conduct that the case law references when it
4 talks about the inapplicability of the LWOP Statute. You also have as in State v.
5 Gordon, you had a situation where someone is alleged to have committed the crime
6 of conspiracy to traffic on September, somewhere between September the 19th and
7 the 23rd and then five days later they have been accused of committing the offense of
8 trafficking within that period and I think the argument was made in State v. Gordon
9 that because that is a continuing course of conduct it should be treated as one event
10 for the purpose of invoking that one Statute and they made it inapplicable. Judge,
11 this is clearly not the case in our ... in our situation. We had a I believe it was an
12 eight or nine month time frame between the first incident that happened in
13 Williamsburg County in 1998 and the second incident that happened in August of
14 1999 in Georgetown County. It was in complete separate counties, it was under
15 complete different circumstances and I don't think that that particular argument is
16 appropriate in this case. I mean it clearly wasn't a continuing course of conduct. The
17 victim testified that he actually didn't have any contact ...

18 THE COURT: But under ... but under Lyle, the reason I let the
19 evidence in of the prior incident under Lyle was that because of the way the case law
20 breaks down on child sex offenses that if it involves the same victim, under Lyle it's
21 looked at as part of a common scheme or plan. There is certainly no case on point
22 but it is my ruling that it is one common scheme or plan for Lyle purposes, does that
23 require me to find that it's one continuous event for sentencing purposes?

24 MS. BARR: Judge, I don't think so. I think there are two separate
25 issues. I believe that one of ... the primary reason the Court allowed the second

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1 incident to come in as evidence is because it showed that it was the same victim, it
2 happened at a church sponsored function, the assault began the same way, it ended
3 the same way. It is a situation where the victim was isolated from other folks to
4 allow the assault to take place. I think it's been different. And also I believe that
5 there is ... there is case law that allows in evidence of subsequent illicit conduct
6 between the Defendant and the victim in the child sexual assault case. So, I think
7 that the Court allowed that in properly under Lyle and under the case law that allows
8 in subsequent illicit conduct between the parties but I definitely think it's certainly a
9 different issue when it comes to sentencing in the Life Without Parole Statute. I
10 think the Life Without Parole Statute in order to make it inapplicable here for
11 example, if you had a situation where on this camping trip he assaulted the child that
12 night and then got up the next morning and assaulted the child again or on the way
13 home assaulted the child again, I think that that would create a better argument or a
14 more solid argument that the Life Without Parole Statute didn't take place because it
15 was along the continuing course of conduct as opposed to a common scheme or plan.
16 But, I think when you have a nine month delay between the assault where the victim
17 and Defendant didn't see each other at any point in time during the time period which
18 the assault took place, I think it's a different thing. I think it's a highly different
19 matter.

20 THE COURT: All right. The ... is that all you want to say on that
21 point? On the quashing of the LWOP Notice for the one continuous event argument?
22 I haven't gotten yet to the ... to the latter part of that analysis but on the argument Mr.
23 Barr advances that these two incidents should be considered one continuous event,
24 anything else you have on that point?

25 MS. BARR: No, Your Honor.

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1 THE COURT: His next point was my refusal to give an advance
2 ruling, I'll call it, on whether on how I was going to let Mr. Taylor be cross examined
3 insofar as his criminal record is concerned. His prior criminal record.

4 MS. BARR: Your Honor, I ... as I understand the law, the Court is not
5 required to issue an advisory opinion and I think that rulings that we see regarding
6 Motions in limine in past situations where cases are appealed, one of the things that
7 the Appellate Court require is that if you get a preliminary ruling on a Motion in
8 limine, you're not protecting the record. You actually have to bring the Motion again
9 once the evidence is offered to preserve it for appeal. So, you know, one of the
10 things that I would tell the Court is that first of all, if Your Honor had issued an
11 advisory opinion it's not binding because it hasn't been ruled on officially as far as the
12 trial is concerned. Second of all, it appears that Mr. Taylor would want to have his
13 cake and eat it, too. You know, you ... you made an interesting point when you
14 suggested, you asked a question whether or not the defense had during the course of
15 their cross examination of the victim and through closing argument they refer
16 repeatedly to this Georgetown County incident for which we have a conviction.
17 Now, although I understand there is a Post Conviction Relief Action pending, as far
18 as we're concerned today as we stand in the courtroom he still has a conviction for
19 that. Unless ... unless and until some other Court determines that that's no longer the
20 case it's still a conviction.

21 THE COURT: Well, if ... if the case law is that if somebody has been
22 convicted of a crime, let's just say it involves dishonesty so it would be
23 automatically admissible for impeachment purposes without the prejudicial impact
24 analysis, the person who is on the stand getting impeached would have the right to
25 say yes, but that's under appeal. I don't know whether the case law would say yes,

HEARING

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1 but that's subject to a Post Conviction attack right now. I don't know what the
2 answer to that question is.

3 MS. BARR: Yes, sir.

4 THE COURT: But, you're saying that ... that ... I assume you're saying
5 that my ruling was correct in not giving an advance ruling on that.

6 MS. BARR: I don't think that the Court would be required to give an
7 advance advisory opinion regarding the issue that come into evidence. I think that the
8 Defendant as well as the State has to offer the evidence before a ruling is required
9 and you will see that one of the things that I thought about was ask the question of
10 whether or not if it was even a issue in the course of the trial and in closing
11 arguments if the Defendant had got on the stand would I then not be allowed to cross
12 examine him regarding the fact that he pled guilty and Mr. Barr's response to that
13 was, "Well, you know, he may have been able to offer an explanation for that." And
14 I don't know that ... that he would have ... could have offered an explanation that
15 didn't implicate the other guilty pleas because he had two other guilty pleas to child
16 sexual related offenses to two other victims and, you know, we see it in this
17 courtroom and the courtrooms across the state where you have Defendants who have
18 multiple charges pending and they'll put it up in a lump sum and plea to all of them
19 just to dispose of all them, that happens every day. But, how he could have offered
20 an explanation that didn't implicate the other crimes would ... which would have been
21 if not more prejudicial then at least as prejudicial as the crime that he's committed ...
22 convicted of committing against this child.

23 THE COURT: And you're talking about the lewd act convictions on
24 two other victims?

25 MS. BARR: That's correct. That's correct. In addition, Your Honor,

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1. and again, to protect the record it appears that ground for the Motion for
2. Reconsideration may not properly be preserved because it doesn't state a factual basis
3. for that Motion itself. That would be my response regarding those issues.

4. THE COURT: How about the ... well, let's go back. There's a PCR
5. case, Mr. Barr, called Koon v. State, K-O-O-N, came out this year. I don't know how
6. far long before the trial but in that case, the Defendant requested a Post Conviction
7. Relief in a three strikes case, not a two strikes case but a three strikes case. He had
8. been convicted for grand larceny and burglary, 2nd, which is serious, that's serious.
9. Except he's three strikes. Prior to that he had been convicted of burglary for events
10. that occurred March 13th, March 14th, and March 28th in '70, excuse me, '86. The
11. Supreme Court said that the March 13 and March 14 burglaries were one. The
12. March 28th burglary which occurred 14 days later was far enough away in point in
13. time to be a second separate event. Of course, these were different victims. I know
14. your argument is that this is the same victim so therefore it should be considered as
15. one. How about, Ms. Barr, the State v. Gordon statement that I read earlier that says,
16. "We find that the Recidivist Statute is aimed at career criminals" ... which it doesn't
17. define what a career criminal is ... "those who have been previously sentenced and
18. then commit another crime" ... well, maybe that is a definition ... "not at those whose
19. recidivist status is premised solely upon acts which occurred in time so closely
20. connected." How do you look at that first part of that sentence that says, "We find
21. the Recidivist Statute is aimed at career criminals, those who have been previously
22. sentenced and then commit another crime"?

23. MS. BARR: Judge, I think you have to look at the first part of the
24. sentence in conjunction with the second part of the sentence. I think that that's the
25. only way that you can reconcile the two because that particular case does not define

HEARING

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1 what a career criminal was. Is a career criminal a person who commits multiple
2 crimes and ... and is convicted? Or is a career criminal a person who commits
3 multiple crimes and hasn't been adjudicated on them? So, I think that the only way
4 that you can look at that logically is by looking at the second part and it says that ...
5 that not one who is charged with a crime that is committed so close or is so closely
6, connected in point of time as to come within the purview of Section 17-25-50. I
7 think that's the only time that that's the only way that you can reconcile the two. I
8 think Gordon stands for the proposition if you have someone who goes through a
9 crime spree so to speak, that the Court will not look at crimes most serious or serious
10 crimes that are committed during that spree as a prior conviction. I think that's
11 probably the only way to reconcile that particularly when they invoke the provisions
12 of 17-25-50 and clearly when you look at 17-25-45 it talks about convictions as
13 opposed to the date that these incidents occurred and there is no doubt that on the
14 date that we tried this case in Williamsburg County the Defendant had a conviction
15 for a most serious offense.

16 THE COURT: Okay. Ms. Barr, are you familiar enough to know
17 what the PCR proceeding? Are you familiar with that at all? If that application is
18 granted for whatever error that may have occurred to nullify that conviction and send
19 it back for further proceedings, that would affect these ... this sentencing as well,
20 right?

21 MS. BARR: I absolutely agree with that, yes, Your Honor.

22 THE COURT: All right, Mr. Barr, anything you would like to say in
23' response to ...

24 MR. BARR: Judge, just first of all, and I'll take these in chronological
25 order. The issue regarding what Ms. Barr referred to as advisement of opinion, of

HEARING

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1 course, I think that in ... in an interrogatory kind of situation where you're trying the
2 case, she has equated what would otherwise be a ruling concerning the conduct of the
3 trial with what would otherwise amount to ultimate judgement involving the case so I
4 don't see if ... if ... if what we asked for in limine would ... would be considered an
5 advisement of opinion of course, you know, clearly the trial process would probably
6 not be able to take place as we currently expect it to do. However, in this case, I
7 think that it's a moot issue because the issue of the Defendant taking the witness
8 stand, that issue would address by way of the conduct of the trial at the time that ...
9 that the issue came up again. So clearly I think the record speaks for that so it's not a
10 situation where we asked for it in advance expecting some kind of ruling and never
11 to revisit the issue again when it actually came up at the time that the Defendant
12 would have otherwise been in a position to take the witness stand. The second thing
13 is, you know, I'm a little bit kind of stunned by the State's position that ... that
14 logically finds the aspect of the LWOP Statute which deals with ... with ... with the
15 policy reason for ... for trying to handle the issue of recidivism. The ... clearly based
16 on the Court's statement or holding or I certainly wouldn't want to call it dicta, but
17 the object is it's a positive consideration. And in this case it almost amounts to expo
18 facto kind of situation where in this context you have a person that's being punished
19 or receiving additional punishment when in fact they have not done anything
20 subsequent to the time that ... that their actually on trial for an offense that has taken
21 place. So, clearly I think what you have is a situation where you are kind of reaching
22 back and ... and punishing by way of enhancement conduct that perhaps

23 THE COURT: Happened first?

24 MR. BARR: Sir?

25 THE COURT: Conduct that happened first.

HEARING

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1 MR. BARR: Yes, sir. Conduct that happened first. And for policy
2 reasons, Judge, I just think that that ... that ... that is absolutely against policy.

3 THE COURT: All right. I just want to make sure I ... I want to make
4 sure I state this correctly, Ms. Barr. I'm sure you and Mr. Barr will correct me. The
5 ... not the offense that was tried here occurred in 1998. The offense that resulted in a
6 plea in Georgetown occurred in 1999. The victim in both cases was the same 11 year
7 old boy. In 2006, the Defendant pled in the Georgetown County case and that was
8 most serious strike one. He got served thereafter by Ms. Barr ... you didn't challenge
9 the fact of service?

10 MR. BARR: No, sir.

11 THE COURT: He was served with the LWOP Notice for the
12 Williamsburg County case and the jury trial or the jury in this case on July 12th, 2007
13 returned a guilty verdict and it was my finding at the time that the Life Without
14 Parole Statute mandated that I sentence him to life. I think that's a correct statement
15 of the order we have in this case. Now, Ms. Barr, how about Mr. Barr's argument on
16 the reverse order of these convictions? In other words, Georgetown County
17 happened the second but he pled first. You may have already addressed that.

18 MS. BARR: Judge, I don't know that I did. But, if I did I'll certainly
19 address it again. Your Honor, the Statute that invokes Life Without Parole doesn't
20 make any mention of the dates in which the crimes were committed. For the
21 purposes of jurisdiction on the LWOP Statute, it only concerns convictions, not
22 admission date. In addition, Judge, mention some of the drug case and of course, I
23 know that they're not on the point so to speak but, some of the drug cases that we
24 have and looking at Waiter v. State, Supreme Court Opinion handed down in
25 February of 2007, that was a situation where someone was charged with a drug

HEARING

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1 offense on one day. Two days later they get arrested for another drug offense and of
2 course there is no disposition of that charge between the first and the second. So, the
3 Defendant pleads guilty of one. You have the second one where the State is ... has
4 indicted it for a second offense and the Court determined that that's admissible, that
5 for purposes of that Article of the South Carolina Code of Law it doesn't matter when
6 the crimes were committed. It only matters when the conviction was handed down.
7 And certainly I would take that position in this case. I think to allow the opposite
8 view you really have to put prosecutors and law enforcement in a position if you
9 have a Defendant who commits crimes in multiple states over a period of years we
10 almost have to coordinate the trial of those cases so that that wouldn't be a problem.
11 That's almost impossible to have happen. In this case, although the Williamsburg
12 County case occurred first in time, these case did not come to the attention of law
13 enforcement until I believe it was 2003, 2005 and Georgetown County got the same
14 charge. Your Honor may remember there was a long discussion at trial about the
15 delay between the time the Georgetown County Sheriff's Department notified ... was
16 notified and the time Williamsburg County actually took over the case and there was
17 some concern or questions regarding venue. So, of course, that case came to a
18 conclusion when law enforcement reported the Georgetown County case was before
19 Williamsburg. And sometimes things just happen like that. But, I ... I don't believe
20 that the fact that our case happened first in time and the conviction was second in
21 time is of any legal significance. I think that the legislators or legislators intended
22 that the Courts focus on the date the crime was committed as opposed to the date the
23 crime was committed as opposed to date of conviction. Clearly section 17-25-45 talks
24 about convictions and not dates the crimes were committed.

25 THE COURT: Mr. Barr, I guess the last thing I'll mention is my

HEARING

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1, recollection is is that when ... it may have been right before or during or right after
2 Mr. Taylor and I engaged in the general exchange about whether or not he was going
3 to testify about discussing his Fifth Amendment Rights. I may have just asked a
4 rhetorical question at that time. I don't really recall. If much of the cross
5 examination of the victim has been directed at his credibility in the Georgetown
6 County incident, how would I not allow Mr. Taylor to be cross examined on whether
7 or not that was a conviction. I think you ... you responded to that by saying that yes,
8 even if he could have been cross examined on that point he would have been able to
9 say but there is Post Conviction Relief application pending. And I don't know
10 whether I would have let it go any further than that if I'd have let that in but, is there
11 anything else that either side would like to put on the record at this time?

12 MR. BARR: No, sir, Judge. The only thing that I would say and this
13 is in response to something else that Ms. Barr raised in her final argument. Again,
14 the ... this ... this ... the issue of the LWOP Statute from the policy. It's not
15 substantively controlled by prosecutorial discretion. It's an issue that actually is
16 directly intact with the sentencing authority of the presiding judge. So, to simply say
17 well, this would cause confusion among the various jurisdictions, I mean, clearly
18 that's instead of rational, that's irrational because it would from the standpoint of
19 when a prosecutor would decide to prosecute it would make no difference. Once it in
20 fact is a conviction then that issue would be something that would be addressed by
21 the sentencing judge at the appropriate time that the conviction occurred.

22 THE COURT: All right.

23 MR. BARR: Thank you, sir.

24 THE COURT: Thank you, Mr. Barr. Thank you, Ms. Barr. I'll ...
25 what I'm going to do in this case is prepare an Order and send it to both of you after

HEARING

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1 it's been filed. All right?

2 MS. BARR: Thank you, sir.

3 THE COURT: Thank you.

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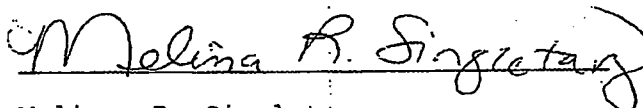
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CERTIFICATE

This is to certify that the hearing in the matter of State vs. Robert Troy Taylor, consisting of Twenty-Two pages is a true and correct transcript; said hearing was reported by the method of Stenomask with Backup.

I further certify that I am not employed by any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 23rd day of October, 2009.



Melissa R. Singletary
Certified Court Reporter

Notary Public for South Carolina
My Commission Expires: 3-5-2014



State of South Carolina
Third Judicial Circuit

GEORGE C. JAMES, JR.
CIRCUIT COURT JUDGE

FILED

07 NOV 19 PM 2:03

CAROLYN F. WILLIAMS
CLERK OF COURT
KINGSTREE, S.C.

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November 16, 2007

Honorable Carolyn Williams
Williamsburg County Clerk of Court
125 West Main Street
Kingstree, South Carolina 29556

RE: State of South Carolina v Robert Troy Taylor (06-GS-45-176)

Dear Ms. Williams:

I enclose an Order for filing in the above matter.

Please file the order and send certified copies to all attorneys of record.

If you have any questions, please let me know.

Yours very sincerely,

George C. James, Jr.

George C. James, Jr.

GCJf:djf

Enclosures

A CERTIFIED TRUE COPY
Carolyn F. Williams
CAROLYN F. WILLIAMS
CLERK OF COURT
WILLIAMSBURG COUNTY

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
06-GS-45-176

COUNTY OF WILLIAMSBURG)

State of South Carolina,)

Plaintiff,)

vs)

Robert Troy Taylor,)

Defendant,)

ORDER

07 NOV 19 PM 2:03
CHARLOTTE F. WILLIAMS
CLERK OF COURT
KINGSTREE, S.C.

FILED

On September 27, 2007, this court convened for a hearing of the defendant's post trial motions, which were filed after a Williamsburg County jury found the defendant guilty of kidnapping and criminal sexual conduct with a minor, first degree. Both offenses are "most serious" under S.C. Code Section 17-25-45. Prior to trial, the State had duly served the defendant and defense counsel with notice that it would seek a sentence of life in prison, without possibility of parole. The basis for this notice was that the defendant had previously entered a guilty plea in Georgetown County to a charge of criminal sexual conduct with a minor, first degree, obviously also a "most serious" offense. Consequently, the defendant has arguably sustained the second of his "two strikes" and is subject to mandatory life without parole.

At the September 27 hearing, the defendant advanced five basic arguments:

1. Concurrent life sentences should have been imposed for the kidnapping and CSC convictions (this court imposed consecutive life sentences).
2. The court should have entered a directed verdict of acquittal on the basis that the State did not establish that venue was proper in Williamsburg County.

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3. The life without parole (LWOP) notice should have been quashed in that the Williamsburg County incident and the Georgetown County incident should be construed to be one continuous event and not subject to separate consideration insofar as imposition of a life sentence for two most serious convictions is concerned.
4. An imposition of life without parole under Section 17-25-45 was not otherwise warranted in light of recent case law interpreting that code section.
5. This court erred in refusing to give an "advance ruling" to the defendant as to whether the court would allow evidence (for impeachment purposes) of the defendant's convictions in Georgetown County for CSC first with a minor and two counts of lewd act on a minor.

1. CONSECUTIVE SENTENCES

The defendant cites no authority for the proposition that imposition of consecutive life sentences amounts to cruel and unusual punishment. In my view, the facts of this case are such that consecutive sentences are appropriate.

2. VENUE

A criminal defendant is entitled "to a directed verdict when the State fails to present evidence that the offense was committed in the county alleged in the indictment." State v Evans, 307 S.C. 477, 480, 415 S.E. 2nd 816, 818 (1992), overruled in part on other grounds by State v Gentry, 363 S.C. 93, 610 S.E. 2nd 494 (2005). However, as noted in State v Crocker, 366 S.C. 394, 621 S.E. 2nd 890, 895 (Ct. App. 2005), "[t]he standard for establishing venue is not a stringent one, for 'venue, like jurisdiction, in a criminal case

need not be affirmatively proved, and circumstantial evidence of venue, though slight, is sufficient.” (quoting State v Williams, 321 S.C. 327, 334, 468 S.E. 2nd 626, 630 (1996).

The defendant maintains there was insufficient evidence as a matter of law that the incident occurred in Williamsburg County. The court, upon joint request of the parties, submitted the question of venue to the jury, charging that the place of the crime had to be established by the greater weight of the evidence. The submission of this issue to the jury was error, but in and of itself is not the error claimed by the defendant. In my view, the evidence taken as a whole establishes, however slightly, that the offense occurred in Williamsburg County.

3. MOTION TO QUASH LWOP NOTICE

The evidence established that the instant crimes occurred in November 1998 in Williamsburg County. The evidence also established that the defendant engaged in basically identical criminal conduct with the very same victim in August 1999 in Georgetown County. Several months before the Williamsburg County trial, the defendant entered a plea of guilty to CSC first with a minor (the 1999 offense) before the Honorable Edward C. Cottingham in Georgetown County and received a sentence of eight (8) years. The defendant now claims that pursuant to S.C. Code Section 17-25-50, the Williamsburg County conviction and the Georgetown County conviction should be treated as one offense for sentencing purposes. Obviously, CSC first with a minor and kidnapping are both “most serious” offenses under Section 17-25-45 (these two Williamsburg County convictions are one strike) and if the defendant’s contention is correct, he would not be subject to life imprisonment pursuant to 17-25-45. The defendant urges this result on the basis that the Williamsburg and Georgetown crimes

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involved the same victim and on the basis that the Georgetown County incident was admitted into evidence under State v Lyle, 125 S.C. 406, 118 S.E. 803 (1923) as part of a common scheme or plan. I disagree. The defendant's actions did involve a common scheme or plan under State v Lyle; however, there is no authority for the proposition that separate offenses which amount to a "common scheme or plan" under Lyle are necessarily "so closely connected in point of time that they may be considered as one offense" under Section 17-25-50. There may be some factual scenarios in which the conclusion argued by the defendant is correct, but under the circumstances of this case, the existence of a common scheme or plan under Lyle does not warrant a finding that the Williamsburg and Georgetown crimes were part of one continuous course of conduct under Section 17-25-50. Therefore, the LWOP notice should not be quashed on this basis.

4. IS DEFENDANT OTHERWISE SUBJECT TO LWOP?

The defendant contends that the Supreme Court of South Carolina's holding in State v Gordon, 356 S.C. 143, 588 S.E. 2nd 105 (2003) forecloses a sentence of life without parole. Again, this defendant has two convictions for criminal sexual conduct in the first degree with a minor. The first offense occurred in November 1998 in Williamsburg County, which of course is the subject of the instant conviction. The second offense occurred in 1999 in Georgetown County. The victim in both cases was the same eleven (11) year old boy. In 2006, the defendant pled guilty to the 1999 Georgetown County offense. The State contends this was "strike one". The defendant was then served with an LWOP notice for the Williamsburg County case, and the jury

trial resulted in a conviction for CSC first with a minor (and kidnapping). The State contends this conviction was strike two and compels an LWOP sentence.

The following discussion includes the relevant legislative history of Section 17-25-45, appellate cases interpreting this statute (and Section 17-25-50), and the arguments presented by the State and the defendant.

A. Legislative History of § 17-25-45

The earliest version of South Carolina Code § 17-25-45 was enacted in 1982 and provided that a third conviction for certain listed crimes would result in a life sentence. The 1982 version specifically provided that "a conviction shall be considered a second conviction only if the date of the commission of the second crime occurred subsequent to the imposition of the sentence of the first offense." 1982 S.C. Acts No. 358 § 1, pp. 2175-76. A similar provision defined a "third conviction." In 1986, the General Assembly amended § 17-25-45 to provide that a third conviction for a crime defined as "violent" in South Carolina Code § 16-1-60 would result in a life sentence. This amendment specifically included the same definitions of a "second conviction" and "third conviction" set forth in the 1982 version discussed above. 1986 S.C. Acts No. 462 § 37, p. 2996. In 1995, the General Assembly amended § 17-25-45 to provide that either a second conviction for a "most serious" crime or a third conviction for a "serious" crime would lead to a sentence of life. The 1995 amendment deleted the specific definitions for second and third convictions, and substituted the language of "prior conviction" now found in section (F) of the statute. 1995 S.C. Acts No. 83 § 18, pp. 565-68.

Up until the passage of the 1995 version, § 17-25-45 specifically required that a second or subsequent offense be committed after imposition of a sentence on the first or

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previous offense. Currently, the statute only requires there to be a prior conviction. The logical conclusion as to the 1995 amendment is that the General Assembly intended to eliminate the requirement that the offenses be committed in sequence.

A plain reading of § 17-25-45(F) as it was written at the time of this offense subjects Taylor to life without parole. The statute states "[f]or the purpose of determining a prior or previous conviction under this section and Section 17-25-50, a prior or previous conviction shall mean the defendant has been convicted of a most serious or serious offense, as may be applicable, on a separate occasion, prior to the instant adjudication." (emphasis added). The words "prior conviction" mean only that § 17-25-45 is premised upon a conviction-to-conviction sequence rather than a conviction-to-offense sequence or an offense-to-offense sequence. In other words, the statute does not require that the previous conviction upon which an enhanced sentence is based precede the commission of the offense upon which the sentence is being imposed. Under this interpretation of the statute, § 17-25-45 applies even when the defendant has first been convicted of one offense that actually occurred after another separate offense.

In the present case, Taylor had a prior conviction for the 1999 offense. Although the 1999 offense occurred after the 1998 Williamsburg County offense, he still had a prior conviction "prior to the instant adjudication." According to the statute, Taylor is subject to life without parole because he had that prior conviction.

B. South Carolina Cases Interpreting § 17-25-45

The Supreme Court first interpreted the 1995 version of § 17-25-45, and specifically the language in subsection (F) concerning "prior convictions," in State v. Benjamin, 353 S.C. 441, 579 S.E.2d 289 (2003). In Benjamin, the Court held that the

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recidivist statute must be construed independently of any other statute, specifically finding § 17-25-50 to be inapplicable in a "three strikes rule" analysis. However, nine months later Benjamin was overruled by State v. Gordon, 356 S.C. 143, 588 S.E.2d 105 (2003). In Gordon, the Court found that its holding in Benjamin regarding the independent nature of § 17-25-45 was contrary to legislative intent and prior precedent of the Court.

In Gordon, the Court states that "the recidivist statute is aimed at career criminals, those who have been previously sentenced and commit another crime, not at those whose recidivist status is premised solely upon acts which occur at times so closely connected in point of time that they may be considered one offense." *Id.* at 111, 588 S.E.2d at 154. Accordingly, the Court held that § 17-25-45 and § 17-25-50 must be construed together in determining whether crimes committed close in time qualify for a recidivist sentence. It is this quoted language that must be analyzed in light of the facts of the instant case.

C. State's Argument

In the present case, Taylor's crimes were separate offenses which resulted in two separate convictions. Section 17-25-50 does not apply to this case because his acts in Georgetown and Williamsburg were not so closely connected in point of time that they are considered one offense. The Supreme Court decided Gordon on the reasoning that § 17-25-45, read in light of § 17-25-50, requires that a defendant be "previously sentenced and then commit another crime." Currently, there is no South Carolina case that deals directly with the issue of whether the conviction of a subsequent crime (offense #2)

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before the conviction of the prior crime (offense #1) is considered a "prior conviction" solely under § 17-25-45.¹

The State contends that the specific language of the statute should govern, and that the statute requires only that the Georgetown conviction be entered before entry of the instant conviction, not that the Georgetown conviction be entered before commission of the instant offense. While a recidivist statute is intended to deter commission of a crime, it is also used to punish the persistent offender and the State contends the defendant is the recidivist the statute was intended to punish.

Although the facts in Walters v. State, 371 S.C. 591, 641 S.E.2d 434 (2007) are significantly different, the case interprets the term "prior conviction" under § 44-53-470, a drug statute. The offense used to enhance the defendant's status to second offender occurred on July 28, 2000, two days after the offense at issue in the opinion. The Court held that the timing of the crimes was irrelevant to the determination of a subsequent offense so long as there is a prior conviction.

D. Defendant's Argument

The defendant argues the foregoing case law renders § 17-25-45 ambiguous and that when a statute is ambiguous, the rules regarding construction of criminal statutes require the court to resolve that ambiguity in the defendant's favor. The cardinal rule of statutory construction is that the court must ascertain and effectuate the intent of the legislature. Statutes, as a whole, must receive "practical, reasonable, and fair interpretation consonant with the purpose, design and policy of law makers." State v.

¹ Cynthia L. Sletto, *Chronological or Procedural Sequence of Former Convictions as Affecting Enhancement of Penalty under Habitual Offender Statutes*, 7 A.L.R.5th 263 (1992) discusses similar cases from other states. The states that upheld a defendant's sentence looked to the specific language of the statute and specifically the use of the term "prior conviction." Other states concluded that prior convictions must have preceded commission of the offense and resolve ambiguities in favor of the defendant.

BJ # 8

Woody, 345 S.C. 34, 37-38, 545 S.E.2d 521, 522-523 (Ct. App. 2001). Therefore, in interpreting a statute, the words must be given their plain and ordinary meaning without resorting to a subtle or forced construction that limits or expands the statute's operation. *Id.*

"Courts will reject the plain and ordinary meaning of statutory language when to accept it would lead to a result so absurd that it could not have been intended by the Legislature, or would defeat plain legislative intention." Gordon, 356 S.C. at 153, 588 S.E.2d at 110. If possible, courts "will construe a statute as to escape an absurd result and carry the legislative intention into effect . . . Moreover, [courts] are constrained to strictly construe penal statutes in the defendant's favor." *Id.* In my view, the defendant's ambiguity argument fails because the statute is not ambiguous on its face; judicial interpretation of the statute under a different factual scenario than presented in Gordon is more difficult.

The defendant claims that according to Gordon, § 17-25-45 does not come into play except when a defendant has been convicted and sentenced, and then commits another crime.² Such a broad reading of the holding in Gordon directly contradicts § 17-25-45.

E. Conclusion As To "Gordon" Argument

If the Court's intent in Gordon was to create LWOP eligibility only where the second offense occurs *after* the conviction for the first offense, then the holding arguably conflicts with the language of § 17-25-45. When the holding is interpreted in light of the specific facts set forth in Gordon, it does not necessarily conflict with the statute. In

² In my view, the Gordon Court uses this statement solely in support of its conclusion that § 17-25-45 and § 17-25-50 should be construed together.

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Gordon, the Court was addressing the interplay between § 17-25-45 and § 17-25-50. The Supreme Court's purpose in construing the two statutes together is to prevent a defendant from receiving life when he commits two offenses that can be considered one offense.

Since the instant case does not deal with the interplay between § 17-25-45 and § 17-25-50, the holding in Gordon does not apply. If the defendant's Georgetown and Williamsburg crimes were so closely connected in point of time that they are considered one offense then the defendant would not be subject to LWOP. Although the crimes involved the same victim, they occurred nine months apart and are considered separate offenses for sentencing purposes. The purpose behind the holding in Gordon is to prevent a defendant from receiving life when two crimes should be considered one when it comes to counting strikes. The fact that the language of § 17-25-45 was changed in 1995 to include the words "prior conviction" instead of requiring the subsequent offense to be committed after the sentence for the previous offense compels this court to conclude that under the facts of this case (which again are inapposite to the facts in Gordon), the defendant is subject to mandatory LWOP.

5. REFUSAL TO GIVE "ADVANCE RULING" ON ADMISSIBILITY OF POTENTIAL IMPEACHMENT EVIDENCE

After the State rested its case-in-chief, the court conducted the standard inquiry of the defendant as to whether he desired to testify. In addition to advising the defendant of his right to remain silent, the court advised the defendant that if he did testify, he would be subject to the same rules governing the examination and cross-examination of other witnesses. He was specifically told that if he had been convicted of any crimes involving dishonesty or false statement, these could be used on cross-examination to impeach his credibility. He was further advised that if he had been convicted of any crimes

punishable by imprisonment for more than one year and that if the court determined that the probative value of admitting such evidence outweighed its prejudicial effect, these convictions could likewise be introduced to attack his credibility. The defendant specifically requested the court for an advance ruling as to whether his Georgetown County CSC conviction could be used to impeach his credibility as opposed to simply being used to establish a common scheme or plan under State v Lyle.

As noted above, during the State's case-in-chief, the court admitted evidence of the Georgetown County incident (but not the guilty plea) as evidence of a common scheme or plan under State v Lyle. At that time, the court instructed the jury that this evidence could be used only as evidence of a common scheme or plan, and for no other purpose. The court did not permit evidence at that stage that the Georgetown County incident had resulted in a guilty plea (and therefore an admission on the part of the defendant). During the court's colloquy with the defendant about his decision whether or not to testify, counsel for the defendant asked the court for a specific ruling as to whether the Georgetown County plea could be used against the defendant for impeachment purposes. Obviously, that offense carries potential imprisonment in excess of one year, but it is not a crime of dishonesty or false statement. Therefore, the court would have been compelled to balance the probative value against its prejudicial effect pursuant to Rule 609(a)(1). The court refused to give such a specific ruling in advance, as the dynamic of direct examination and cross-examination could impact the court's determination of whether the probative value of admitting the conviction for impeachment purposes outweighed its prejudicial effect to the defendant. In other words, "probative value" and "prejudicial effect" are better determined in the immediate

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context of examination and cross-examination, rather than an academic analysis prior to questioning taking place.

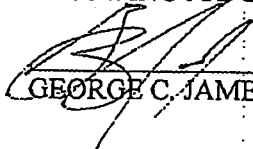
The defendant points to no authority for the proposition that the court was required to give such an advance ruling, and the defendant's motion on this ground is denied.

CONCLUSION

For the foregoing reasons, the defendant's motions are denied.

AND IT IS SO ORDERED.

PRESIDING JUDGE


GEORGE C. JAMES, JR.

Sumter, South Carolina

November 16, 2007

WITNESSES

WCSD

Laura Rogers

ARREST WARRANT NUMBER

K 085100

D/A: 11/24/05

ACTION OF GRAND JURY

Trina Hill
Linda Baker
Foreperson of Grand Jury
Date: *5/11/06*

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2006-GS-45- *176*

The State of South Carolina

County of WILLIAMSBURG

COURT OF GENERAL SESSIONS

MAY TERM 2006

THE STATE

vs.

ROBERT TROY TAYLOR

Indictment for

CRIMINAL SEXUAL CONDUCT WITH A
MINOR - SECOND DEGREE AND
KIDNAPPING

C. KELLY JACKSON, SOLICITOR

A CERTIFIED TRUE COPY
Carolyn F. Williams
CAROLYN F. WILLIAMS
CLERK OF COURT
WILLIAMSBURG COUNTY

STATE OF SOUTH CAROLINA)
COUNTY OF WILLIAMSBURG) INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT WITH A MINOR
- SECOND DEGREE AND KIDNAPPING

At a Court of General Sessions, convened on May 15, 2006, the Grand Jurors of WILLIAMSBURG County present upon their oath:

COUNT ONE - CRIMINAL SEXUAL CONDUCT WITH A MINOR - SECOND DEGREE

That ROBERT TROY TAYLOR did in Williamsburg County during the month of November 1998, wilfully and unlawfully commit criminal sexual conduct with a minor in the second degree by engaging in sexual battery with a minor victim, who was eleven (11) years old, while they were on camping trip, in violation of Section 16-3-655(B) of the Code of Laws of South Carolina (1976), as amended.

COUNT TWO - KIDNAPPING

That ROBERT TROY TAYLOR did in Williamsburg County during the month of November 1998, violate Section 16-3-910 of the Code of Laws of South Carolina (1976), as amended, in that he did unlawfully took child away from child's tent to another.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

A CERTIFIED TRUE COPY

Carolyn F. Williams
CAROLYN F. WILLIAMS
CLERK OF COURT
WILLIAMSBURG COUNTY

C. Kelly Jackson
SOLICITOR

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM Williamsburg COUNTY
Court of General Sessions
The Honorable George C. James, Circuit Court Judge

Case No. 2006-GS-45-176

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

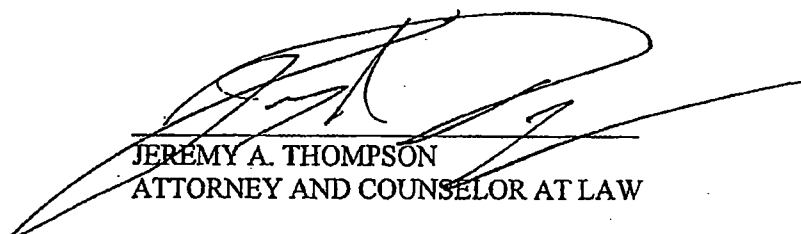
v.

ROBERT TROY TAYLOR,

APPELLANT.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal is in compliance with the August 13, 2007 Order of the Supreme Court of South Carolina relating to the inclusion of personal data identifiers and other sensitive information in documents. [Every incident of the minor's name has been redacted.]



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ATTORNEY FOR APPELLANT.

This 16th day of March, 2010

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM WILLIAMSBURG COUNTY
Court of General Sessions

George C. James, Circuit Court Judge

Case No. 2006-GS-45-176

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

ROBERT TROY TAYLOR,

APPELLANT.

FINAL BRIEF OF APPELLANT

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ATTORNEY FOR APPELLANT.

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STATEMENT OF ISSUES ON APPEAL

I.

Whether the lower court improperly granted the State's motion pursuant to Batson v. Kentucky,¹ to quash the jury?

II.

Whether the lower court improperly found that evidence of the 1999 incident should be admitted as evidence of a common scheme or plan pursuant to Rule 404(b), SCRE?

III.

Whether the lower court improperly found that the probative value of the 1999 incident was not substantially outweighed by the danger of unfair prejudice to the Appellant?

IV.

Whether the lower court improperly denied the Appellant's motion for a directed verdict because the State failed to prove that this offense occurred in Williamsburg County?

V.

Whether the lower court improperly sentenced the Appellant to life without parole pursuant to S.C. Ann. §17-25-45 when the substantive facts of the predicate offense were admitted at trial as common scheme or plan evidence?

¹ Batson v. Kentucky, 476 U.S. 79 (1986).

STATEMENT OF THE CASE

The Appellant was charged with Criminal Sexual Conduct with a Minor in the Second Degree and Kidnapping in Williamsburg County. On July 10-12, 2007, the Appellant proceeded to trial by jury. The Honorable George C. James presided over this proceeding. The Appellant was found guilty as charged. Judge James sentenced the Appellant to consecutive life without parole sentences pursuant to S.C. Code Ann. §17-25-45.²

The Appellant timely filed motions to reconsider his sentence as well as to reconsider the other rulings made by the trial judge on July 20, 2007. A hearing was convened before Judge James on September 27, 2007, to address these motions. By written order filed November 19, 2007, the trial court denied the Appellant's motions.

On January 18, 2008, the Appellant timely served his Notice of Appeal, announcing his intent to appeal his convictions and sentences as well as Judge James' post-trial rulings. The Notice was filed with this Court on January 22, 2008.

Notice of appeal was timely served and filed. The Appellant now appeals his convictions and sentences.

² As will be explained in more detail below, the Appellant's prior most serious conviction was a criminal sexual conduct with a minor in the second degree charge from Georgetown County involving the same victim.

STATEMENT OF THE FACTS

In 1998, the alleged victim³ was a member of the Appellant's church in Murrells Inlet, South Carolina. ROA p. 161, lines 1-10. On November 6 of that year, the victim, along with the Appellant and several other youths in the church, went on a camping trip at a location near Andrews, South Carolina ("the 1998 incident"). ROA p. 162, line 16-p. 164, line 20. The victim testified that the Appellant had his own tent while everyone else slept under a big tarp. ROA p. 166, lines 5-11. He further testified that after he and everyone else had fallen asleep, the Appellant grabbed him by his mouth, carried him over to the Appellant's tent, and took all of the victim's clothes off. ROA p. 166, line 25-p. 167, line 11. The Appellant then made the victim touch the Appellant's penis and rectum, which was followed by the Appellant touching the victim's penis and rectum. ROA p. 167, lines 12-16. The Appellant then had anal intercourse with the victim. ROA p. 167, lines 19-24. After the Appellant finished, he carried the victim back to the tarp and fell asleep next to the victim, holding him through the night. ROA p. 168, lines 13-23.

The victim was also permitted to testify about another alleged assault committed by the Appellant. In the summer of 1999, the victim went on a youth group trip to the beach in Georgetown County ("the 1999 incident"). ROA p. 171, lines 2-23. The youth group came back to the church to shower. ROA p. 172, lines 6-19. However, after the victim and a friend realized that all of the showers were taken up, the Appellant, who was present at the church, asked them if they wanted to take a shower at the Appellant's home, which was nearby. ROA p. 172, line 20-p. 173, line 17. While the victim was showering, the Appellant entered the bathroom, took all

³ Inasmuch as the victim was a minor at the time the assault allegedly occurred, he will be referred to throughout the Appellant's filings in this manner as "the victim." See In re Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings, S.C. Sup. Ct. Order dated August 13, 2007 (Davis Adv. Sh. No. 31 at 49).

of his clothes off, and made the victim touch his rectum and penis. ROA p. 174, line 23-p. 175, line 1. The Appellant also touched the victim's rectum and penis. ROA p. 175, lines 1-4. The Appellant then proceeded to have anal intercourse with the victim. ROA p. 175, lines 14-20. After he finished, the Appellant drove the victim and his friend back to the church. ROA p. 177, lines 6-12. Both the victim's friend and the Appellant's wife were in the house at the time this second assault allegedly occurred. ROA p. 174, lines 4-9.

The defense presented the testimony of Trevor M., the Appellant's nephew, who testified that he went on the camping trip with the victim and the Appellant. ROA p. 284, line 22-p. 285, line 16. Trevor testified that he stayed up almost the entire night. ROA p. 287, line 23-p. 288, line 2. Trevor's sleeping bag was next to the Appellant's. ROA p. 288, lines 7-9. The Appellant's young son slept in the same sleeping bag with the Appellant that night. ROA p. 288, lines 9-25. Trevor testified that no one got up all night, and that everyone was in the same location when they got up the next morning. ROA p. 290, lines 2-23. In particular, the Appellant was sleeping in the same sleeping bag with his son the following morning. ROA p. 291, lines 9-11.

ARGUMENT

- I. The lower court improperly found that the Appellant's reason for striking of Juror #146 was pretextual and improperly granted the State's Batson motion.

A. How the Issue Arose Below

During the first jury selection, the Appellant exercised all ten of his peremptory strikes. Eight of these challenges were used to strike white individuals.⁴ See ROA p. 10, lines 10-19. At the conclusion of the first jury selection, the State moved to quash the jury, arguing that the Appellant's strikes were racially motivated. See ROA p. 10, lines 19-23. The trial court then required the Appellant to provide race-neutral reasons for his striking of the potential jurors.

At particular issue was Juror 146, who was an administrative assistant. Counsel for the Appellant explained why he struck her:

I have found over the years that the more education jurors have the less likely they are to adopt arguments—they usually come with their own idea or agenda. Over the years, I've learned to shy away from jurors with higher education. And, in addition to that, I also know her husband personally and we just don't get along.

ROA p. 11, line 22-p. 12, line 3. In response, the State argued that the Appellant did not use a peremptory strike on an African-American female—Juror 138—who was an accountant and had sixteen years of education. See ROA p. 16, lines 1-12. While counsel for the Appellant was unaware that Juror 138 had sixteen years of education, he did know that she was an accountant. See ROA p. 16, lines 20-21; p. 17, lines 3-4. He explained that his primary focus was not necessarily education, but, rather, a position in management:

[Juror 146 is] an Administrative Assistant. Inasmuch as she would be in management that she would have got there by promotion or her qualification. Certainly she would have met the qualification to be in management. But she is in management. I do have the

⁴ The Appellant is white.

note that the lady worked at Tupperware as an accountant. I know that probably at least a substantial number of Tupperware employees and I don't know a black person at Tupperware that is in management.

ROA p. 16, line 24-p. 17, line 7. See also ROA p. 34, lines 10-11 ("Judge, when I talk about education, I'm talking about the actual position a person is in"); p. 34, line 12-p. 36, line 10.

At the conclusion of the Batson hearing, the trial court found that the Appellant's strike of Juror 146 was racially motivated and quashed the jury:

Mr. Barr, it would be my finding that Batson was violated to the fact that you did accept [Juror 138] and it's with reluctance that I do this because obviously as you said earlier I've been in this position many times myself. [Juror 138] even though a black female with four years of post-high school education and employed with the same company for 18 years as an accounting [sic] you accepted her but did not accept someone who is an administrative assistant with less formal education who was a white female.

ROA p. 37, lines 7-16.⁵ The Appellant was not allowed to strike Juror 146 during the second jury selection, and she was ultimately seated on the jury. See ROA p. 43, lines 1-5. The Appellant now contends that the trial court's decision to grant the State's Batson motion was in error.

B. Discussion

The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution prohibits the striking of a potential juror on the basis of race or gender. State v. Edwards, 384 S.C. 504, 508, 682 S.E.2d 820, 822 (2009); see also Batson v. Kentucky, 476 U.S. 79 (1986); J.E.B. v. Alabama, 511 U.S. 127 (1994). The Batson hearing procedure is well established. Once a Batson motion is made, the proponent of the strikes must offer race-neutral reasons for each strike that he exercised. State v. Cochran, 369 S.C. 308, 314, 631 S.E.2d 294,

⁵ The trial court denied the Batson motion with regard to all of the other strikes.

298 (2006). Assuming that the trial court accepts the reasons given as race-neutral, the burden then shifts to the moving party to demonstrate that the proponent's explanations "are mere pretext to engage in purposeful racial discrimination." *Id.* at 315. "Pretext generally will be established by showing that similarly situated members of another race were seated on the jury." State v. Haigler, 334 S.C. 623, 629, 515 S.E.2d 88, 91 (1999).

If a trial court erroneously grants a State's Batson motion, but none of the jurors who were found to have been improperly struck are seated on the jury, any error in quashing the juror is harmless. Edwards, *supra*, at 509, 682 S.E.2d at 823. However, if a trial court improperly granted a Batson motion and a disputed juror *is* seated on the jury, then prejudice to the appellant is presumed and the proper remedy is a new trial. *Id.* On appeal, an appellate court will uphold a trial court's Batson ruling unless it is clearly erroneous. *Id.* at 509, 682 S.E.2d at 822.

As an initial matter, the Appellant would note that he is not contending that the trial court utilized an improper Batson procedure. See generally State v. Cochran, *supra*. Instead, the Appellant argues that the trial court's finding that his strike of Juror 146 was racially motivated is clearly erroneous. The trial court's entire basis for sustaining the State's Batson motion was because it found that Juror 138 was a similarly situated individual of a different race. However, a close reading of the record demonstrates that Juror 138 was not similarly situated. The information counsel for the Appellant had at his disposal regarding these two jurors was as follows: Juror 146 was an administrative assistant and Juror 138 was an accountant. It is obvious that defense counsel simply misspoke when he said education level initially, as he stated that he did not have the information that the State had regarding the jurors' education levels. See ROA p. 16, lines 8-13. He later made it perfectly clear that the reason he struck Juror 146 was because of her position in management. See ROA p. 16, line 24-p. 17, line 7. He also explained that he

knew that Juror 138 *could not be in management* because he knew, as an African-American individual, she could not be in management at her place of employment, Tupperware.⁶ Given the rationale of defense counsel's strategy, it made absolute sense for him to keep Juror 138 as opposed to Juror 146 because he knew that Juror 138 would not be in management at her place of employment whereas Juror 146 was certainly in management.

Nevertheless, the trial court found that Juror 138 was similarly situated. However, the trial court did so *only* on the basis of level of education, not level of employment. See ROA p. 37, lines 7-16. The justification given by the trial court for its ruling—that Juror 138 had more education than Juror 146 had—was not known by defense counsel at the time he exercised his strike. Furthermore, the justification given by defense counsel for his strike—that Juror 146 was in management whereas Juror 138 could not be—was completely race-neutral and was not challenged by the State whatsoever. Given that education was not the basis for the strike, level of employment was, rendering the trial court's conclusion that Juror 138 was similarly situated incorrect, the trial court's ruling is clearly erroneous. Furthermore, since Juror 146 was seated on the jury that ultimately convicted the Appellant, see ROA p. 43, lines 1-3, prejudice to the Appellant is presumed and he is entitled to a new trial. See Edwards, supra.

⁶ At first blush defense counsel's resort to race during a Batson hearing to provide a race-neutral explanation for a strike may appear to make no sense and lend credence to the State's argument that he was discriminating against jurors on the basis of race. However, upon closer examination, defense counsel's explanation as to how he knew that Juror 138 was not in management due to her race supports his position, not the State's.

- II. The lower court improperly found that the facts of the 1999 incident should be admitted as common scheme or plan evidence.
- III. The lower court improperly found that the probative value of the 1999 incident was not substantially outweighed by the danger of unfair prejudice to the Appellant.

A. How the Issue Arose Below

The Appellant was charged with criminal sexual conduct with a minor in the second degree in Georgetown County for allegedly engaging in anal intercourse with the victim in this case in the Appellant's home in 1999 ("the 1999 incident"). That charge ultimately resulted in a conviction as a result of a guilty plea. See ROA p. 130, lines 3-7.

Prior to the victim's testimony, the Appellant moved to exclude any reference to the conviction and any testimony regarding the underlying facts of the 1999 incident as violative of Rules 403 and 404(b), SCRE. See ROA p. 106, line 23-p. 107, line 11. A hearing was held and the victim testified that on November 6, 1998, he went on a camping trip with the youth group in his church ("the 1998 incident"). ROA p. 109, lines 3-7. The victim further testified that after everyone had gone to sleep, the Appellant carried the victim back to his tent and proceeded to touch his rectum and penis and forced the victim to do the same to him. ROA p. 109, line 18-p. 110, line 11. The Appellant and the victim then had anal intercourse. See ROA p. 110, lines 12-16. The victim testified that after the assault was over, the Appellant told him not to tell anyone about the assault, took him back to the tarp, and fell asleep beside him. ROA p. 110, lines 17-22.

The victim then testified that during the summer of 1999, he was at the church with the youth group after a trip to the beach when the Appellant asked him and his friend Charles to come back to the Appellant's home to shower. ROA p. 111, line 3-p. 112, line 6; p. 118, lines 14-19. He further testified that while he was in the shower, the Appellant came into the

bathroom and proceeded to touch his rectum and penis, and forced him to do the same to the Appellant. ROA p. 113, lines 7-14. He testified that they then engaged in anal intercourse. ROA p. 113, lines 15-17. After the assault was over, the Appellant told him not to tell anyone what happened. ROA p. 114, lines 11-17. The victim then got dressed and left the room. ROA p. 125, lines 9-10.

At the conclusion of the victim's testimony, the Appellant moved to exclude the testimony because the 1998 and 1999 incidents simply were not similar:

So in terms of the common scheme or plan and motive under the Lyle exception, Judge, we would submit to the Court that—that there is—as far as the factual similarities, the factual similarities, they're just not there. ... And in looking at the facts, clearly, we don't have the appropriate components for a Lyle exception.

ROA p. 133, lines 12-23. The Appellant then argued that even if the bad act evidence was admissible under Rule 404(b), SCRE, the evidence should still be excluded under Rule 403, SCRE. See ROA p. 133, line 23-p. 134, line 25. After taking an overnight recess, the trial court ruled that the evidence would be admissible, finding that the evidence showed "continued illicit intercourse between the same parties." See ROA p. 140, line 11-p. 148, line 22.

The victim proceeded to testify consistently with his *in camera* testimony. See ROA p. 157, line 16-p. 177, line 15. Immediately prior to beginning his testimony about the 1999 incident, the Appellant renewed his objection to the bad act evidence, which was overruled. See ROA p. 170, lines 9-12. The Appellant now contends that the trial court's rulings were in error.⁷

B. Discussion

⁷ Inasmuch as the facts of the 1999 incident were the subject of a conviction, the Appellant does not challenge the trial court's finding that the facts were proven by clear and convincing evidence. See generally State v. Fletcher, 379 S.C. 17, 664 S.E.2d 480 (2008).

Generally, evidence of other crimes or bad acts is inadmissible to prove that the charged crime in fact occurred. Rule 404(b), SCRE; see also State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923). However, an exception exists for evidence tending to establish a common scheme or plan embracing the commission of two or more crimes so closely related to each other that proof of one tends to establish the existence of the other. Rule 404(b), SCRE; see also State v. Wallace, 384 S.C. 428, 683 S.E.2d 275 (2009). When a court examines whether or not evidence should be admitted pursuant to the common scheme or plan exception, the court "must analyze the similarities and dissimilarities between the crime charged and the bad act evidence to determine whether there is a close degree of similarity." Wallace at 433, 683 S.E.2d at 278. "When the similarities outweigh the dissimilarities, the bad act evidence is admissible under Rule 404(b)." Id.; see also State v. Clasby, 385 S.C. 148, 682 S.E.2d 892 (2009).

Even if other crimes evidence falls within a Rule 404(b), SCRE, exception, the evidence may still be excluded if its probative value is substantially outweighed by its danger of unfair prejudice to the criminal defendant. Rule 403, SCRE; see also Clasby, supra. "The determination of the prejudicial effect of the evidence must be based on the entire record and the result will generally turn on the facts of each case." State v. Fletcher, 379 S.C. 17, 24, 664 S.E.2d 480, 483 (2008).

This case presents the question of *what* must be similar in order for other bad acts to be admitted. The Appellant will concede that the alleged actions which constituted the actual offense were the same in both the 1998 and the 1999 incidents. In both cases, the Appellant was alleged to have touched the victim's rectum and penis, and was alleged to have forced the victim to do the same to him, before engaging in anal intercourse with the victim. Additionally, the

Appellant was alleged to have told the victim not to tell anyone about the incident after the intercourse was finished.

However, virtually every other aspect of each crime is dissimilar from the other. The incidents occurred months apart. The 1998 incident occurred in the middle of the night during a camping trip; the 1999 incident occurred in the middle of the day at the Appellant's home. The Appellant physically carried the victim to his tent during the 1998 incident; the victim willingly went with the Appellant to his home during the 1999 incident. The 1998 incident occurred outdoors inside a tent; the 1999 incident occurred indoors in the shower. The 1998 incident occurred during a church-sponsored trip; the 1999 incident occurred after a church-sponsored trip had finished. The Appellant was a part of the church-sponsored trip in 1998; he was not a part of the church-sponsored trip in 1999. After having intercourse during the 1998 incident, the Appellant warned the victim not to say anything and then intentionally fell asleep beside him, leaving the evidence that something improper had occurred available to anyone who was on the trip. After having intercourse during the 1999 incident, the Appellant warned the victim not to say anything and then immediately took him back to the church, thereby preventing anyone from knowing that anything improper had occurred.

"Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith," but may be admissible to show "the existence of a common scheme or plan." Rule 404(b), SCRE. In the present case, the State admitted evidence that the Appellant had anal intercourse with the victim in 1999 to show that the Appellant had anal intercourse with the victim in 1998. That fact, standing alone cannot lead to the conclusion that the Appellant engaged in a common scheme or plan throughout the course of these two incidents. Permitting the State to introduce evidence of the 1999 incident would be

akin to permitting the State to introduce evidence in a burglary prosecution, under the common scheme or plan exception, that a defendant broke into a two-story home in broad daylight using a stolen key and entering through the front door along with evidence that the defendant had also broken into an apartment in the middle of the night by breaking the door by force and entering through the front door nine months later. Evidence of the latter would not be designed to show a common scheme or plan. Instead, the evidence would be designed to show that because the defendant committed one burglary, he committed another, even if the only similarity between the burglaries was the fact that the defendant entered through the front door. The State's attempt to do so should be explicitly prohibited by Rule 404(b), SCRE. Similarly, in the present case, the only reason evidence of the 1999 incident was introduced was to show that the Appellant must have acted in conformity therewith and must have committed the 1998 incident. Such evidence is explicitly prohibited by the terms of Rule 404(b), SCRE. See State v. Fletcher, *supra*, at 36, 664 S.E.2d at 484 ("This case fundamentally demonstrates why certain prior bad act testimony is inadmissible, i.e., it is used by the jury to infer that the defendant did in fact commit the crime for which he is on trial"). By permitting the State to introduce evidence of the 1999 incident, the trial court committed error.⁸

Assuming, *arguendo*, that evidence of the 1999 incident was properly admitted pursuant to Rule 404(b), SCRE, the Appellant contends that the evidence should have been excluded

⁸ While the trial court clearly balanced the similarities with the dissimilarities of the two incidents, the trial court also found that the evidence was admissible as evidence of "continued illicit intercourse" between the two parties. See Trial Tr. p. 137, lines 20-21. Given the Supreme Court's recent rulings in Wallace and Clasby, the Appellant is uncertain whether the distinction between "continued illicit intercourse" cases—see generally State v. Kirton, 381 S.C. 7, 671 S.E.2d 107 (Ct. App. 2008); State v. Mathis, 359 S.C. 450, 597 S.E.2d 872 (Ct. App. 2004); State v. Weaverling, 337 S.C. 460, 523 S.E.2d 787 (Ct. App. 1999)—and other sex offense cases not falling within that category still exists. To the extent that the standard of admissibility is even further relaxed where the State proves "continued illicit intercourse" between the same parties, the Appellant argues that the trial court's reliance on that line of cases was misplaced. Each of those cases involved multiple sexual encounters between the same parties, usually with acts escalating in nature as time went on. Here, the same parties allegedly engaged in the same sexual activity once in November 1998 and once during the summer of 1999. Such conduct cannot meet the "continued illicit intercourse" standard.

pursuant to Rule 403, SCRE. The 1999 incident had virtually nothing in common with the 1998 incident, thereby severely limiting the probative value of the 1999 incident. Furthermore, the danger of unfair prejudice to the Appellant was monumental. Instead of being on trial for only the 1998 incident, the admission of evidence of the 1999 incident placed the Appellant on trial for both offenses. Mounting a defense to *both* offenses, especially when the Appellant had already pleaded guilty to the 1999 offense, placed the Appellant in an impossible situation. Consequently, the evidence should have been excluded under Rule 403, SCRE, as well.

Finally, the Appellant was undoubtedly prejudiced by the admission of evidence pertaining to the 1999 incident. Once evidence of the 1999 incident was admitted, the Appellant had to sufficiently dispute both the 1998 and the 1999 incidents if he had any hope of acquittal. He mounted such a defense to the 1998 incident through the testimony of Trevor M., who testified that he stayed awake all night and that the Appellant never moved from his son's side the entire night. Had that been all he was required to present a defense against, it is extremely likely that the jury would have found the Appellant not guilty of both offenses.⁹ Therefore, the Appellant is entitled to a new trial.

⁹ Furthermore, the impact that the admission of the 1999 incident had on the Appellant's decision to not testify cannot be understated. Due to the amount of testimony pertaining to the 1999 incident given by the victim, the Appellant had virtually no choice but to not testify, lest he be required to admit that he committed the 1999 incident. See ROA p. 276, line 6-p. 280, line 12; p. 301, line 4-p. 304, line 6; ROA p. 347, line 2-p. 348, line 19. Had he done so, a conviction on the 1998 incident was all but assured. While it cannot be known what the Appellant's specific testimony on the 1998 incident would have been, his testimony would have most certainly been that he had not committed the crimes. See ROA p. 326, line 8-p. 333, line 3. Accordingly, to the extent that the Court deems to give it any weight, the Appellant would assert that his testimony would have further increased the likelihood that the jury would not have found him guilty of these crimes.

IV. The lower court improperly denied the Appellant's motion for a directed verdict on the ground that the State had failed to prove that the offense occurred in Williamsburg County.

A. How the Issue Arose Below

The State presented four witnesses at the Appellant's trial. The first witness, Gaye Allen Cooke, was a child therapist whose primary purpose was to testify about children who are sexually abused. She did not testify about the facts of the case. See ROA p. 51, line 15-p. 68, line 9.

The second witness was the victim's mother, Pamela.¹⁰ She testified that she "knew" that the camping trip took place in Williamsburg County because the victim told her it took place there. ROA p. 90, line 22-p. 91, line 5. She further testified that "what we were told" was that the location of the camping trip was on "the other side of Andrews." ROA p. 91, lines 15-17. She did not go on the camping trip. See ROA p. 91, lines 24-25.

The third witness was the victim. He testified on direct examination regarding how he got to the campsite:

Q: Where'd y'all go?

A: Just outside of Andrews.

Q: Okay.

A: On 521.

Q: Okay. And do you recall any of the landmarks, or does anything about where the actual campsite was stand out in your mind?

A: The campsite was actually back in the woods right next to the Black River. You had to pass like a bunch [of] cornfields just to get back there to it.

Q: Okay. And you remember that?

A: Yes, ma'am.

...

¹⁰ All references to Pamela's last name have been omitted.

Q: Are there certain parts of Andrews that fall in Williamsburg and Georgetown County?

A: Yes, ma'am.

ROA p. 164, line 19-p. 165, line 13. However, on cross-examination, the victim admitted that he didn't know where the campsite was located, and that the only reason he thought it was in Williamsburg County was because someone else told him the campsite was in Williamsburg County. See ROA p. 224, lines 8-18.

The fourth witness was Laura Rogers, a sergeant with the Williamsburg County Sheriff's Office. She testified that she took a statement from the victim on November 23, 2005, just over seven years after the 1998 incident, and got directions to the campsite from him. ROA p. 230, lines 17-22; p. 247, lines 3-16. She further testified that she followed the directions to a location "very deep" in Williamsburg County. See ROA p. 247, line 17-p. 248, line 9. However, on cross-examination, Sergeant Rogers testified that she did not take the victim out to that location and that the location "was familiar to what he had explained." ROA p. 253, line 9-p. 254, line 4. When counsel for the Appellant asked Sergeant Rogers if she could take him to the location where the assault happened, Sergeant Rogers replied "I can take you to the familiar place that I had gone to." ROA p. 255, lines 12-20.

At the close of the State's case, the Appellant moved for a directed verdict on the basis that the State had failed to prove that the 1998 incident occurred in Williamsburg County. See ROA p. 259, line 5-p. 261, line 7. While the trial court agreed "that the evidence is hazy," the trial court ultimately denied the directed verdict motion because "there is evidence, however weak [about] the whereabouts of the alleged incident." ROA p. 267, lines 13-19. The Appellant renewed his motion at the conclusion of his case, which was again denied. See ROA p. 304, line

7-p. 307, line 6.¹¹ The Appellant now contends that the lower court's decisions to deny his directed verdict motions were in error.

B. Discussion

"A criminal defendant is entitled to a directed verdict when the State fails to present evidence that the offense was committed in the county alleged in the indictment." State v. Williams, 321 S.C. 327, 333, 468 S.E.2d 626, 630 (1996). "The standard for establishing venue is not a stringent one, for 'venue, like jurisdiction, in a criminal case need not be affirmatively proved, and circumstantial evidence of venue, though slight, is sufficient....'" State v. Crocker, 366 S.C. 394, 404, 621 S.E.2d 890, 895 (Ct. App. 2005) (quoting Williams at 334, 468 S.E.2d at 630).

The simple fact of the matter is that no one testified that the offense occurred in Williamsburg County. The victim's mother testified that the offenses occurred in Williamsburg County because the victim told her that they did. The victim testified that the offenses occurred in Williamsburg County because Sergeant Rogers told him they did. Sergeant Rogers testified that the offenses occurred in Williamsburg County because the victim gave her directions that led her to "deep" Williamsburg County, even though the victim's testimony puts the campsite near Andrews, which is partially in *Georgetown* County. Essentially, the Appellant's directed verdict motion was denied because Sergeant Rogers followed directions given seven years after the incident, directions which were provided by someone who was eleven years old at the time of the incident and riding to a campsite with a church youth group, and found a place that looked similar to what he had described. She did not even take the victim back to the location to

¹¹ The matter was again raised in the motion to reconsider and the hearing held on that motion. See ROA p. 339; p. 344, lines 8-14. In its Order ruling on the various issues presented during the motion to reconsider hearing, the trial court reaffirmed its rulings on this issue. See ROA pp. 336-337.

confirm that the location that she found was indeed where the incident occurred. This evidence does not even qualify as "slight" evidence that the crimes occurred in Williamsburg County.

Given the testimony presented at trial, we simply do not know where the offenses were allegedly committed. While each of the State's fact witnesses testified that they believed that the offenses occurred in Williamsburg County, simply saying that the offenses did occur there without any other offer of proof cannot be evidence sufficient to prove venue. There is as much evidence that these crimes were committed in Greenville County as there is that these crimes were committed in Williamsburg County. The Appellant was entitled to a directed verdict, and his convictions should be reversed.

V. The lower court improperly sentenced the Appellant to life without parole because the substantive facts of the predicate offense were admitted as common scheme or plan evidence.

A. How the Issue Arose Below

As noted above, prior to this trial, the Appellant pleaded guilty to one count of criminal sexual conduct with a minor in the second degree in Georgetown County. Using this prior conviction as a predicate "most serious" offense pursuant to S.C. Code Ann. §17-25-45, the State sought a life without parole sentence if the Appellant was convicted of either charge at the conclusion of this trial. In response, the Appellant filed a motion *in limine* to quash the LWOP notice.

Following the jury's verdict, the Appellant briefly argued that the LWOP notice should be quashed because "this offense does not qualify for life without parole." ROA p. 322, lines 12-13; see also ROA p. 324, lines 4-14. The trial court denied this motion, but left the door open for reconsideration of the matter if the Appellant so moved. See ROA p. 325, lines 13-20. The trial court then imposed consecutive LWOP sentences. See ROA p. 334, line 21-p. 335, line 7.

Following the Appellant's trial, the Appellant filed a motion to reconsider the sentence on the ground that he should not have been sentenced to LWOP. See ROA p. 337. At the motion to reconsider hearing, the Appellant argued that the prior conviction and the current offenses should be considered one offense pursuant to S.C. Code Ann. §17-25-50 because the prior conviction "was a guilty plea involving this same Defendant or same victim for the same offense." ROA p. 344, line 24-p. 345, line 18. The trial court then asked the State whether because "it is my ruling that [the offenses constitute] one common scheme or plan for Lyle purposes, does that require me to find that it's one continuous event for sentencing purposes?" ROA p. 352, lines 18-23. Ultimately, the trial court would answer that question in the negative:

The defendant now claims that pursuant to S.C. Code Section 17-25-50, the Williamsburg County conviction and the Georgetown County conviction should be treated as one offense for sentencing purposes. ... The defendant urges this result on the basis that the Williamsburg and Georgetown crimes involved the same victim and on the basis that the Georgetown County incident was admitted into evidence under State v. Lyle, 125 S.C. 406, 188 S.E. 803 (1923) as part of a common scheme or plan. I disagree. The defendant's actions did involve a common scheme or plan under State v. Lyle; however, there is no authority for the proposition that separate offenses which amount to a "common scheme or plan" under Lyle are necessarily "so closely connected in point of time that they may be considered as one offense" under Section 17-25-50. ... Therefore, the LWOP notice should not be quashed on this basis.

ROA pp. 367-368. The Appellant now contends that he should not have been sentenced to LWOP.

B. Discussion

Upon conviction for a "most serious" offense, a criminal defendant must be sentenced to life without parole if he has a prior conviction for another "most serious" offense. S.C. Code Ann. §17-25-45(A)(1). Criminal sexual conduct with a minor in the second degree is a "most serious" offense. S.C. Code Ann. §17-25-45(C)(1). "For the purpose of determining a prior or previous conviction under this section and Section 17-25-50, a prior or previous conviction shall mean the defendant has been convicted of a most serious ... offense, as may be applicable, on a separate occasion, prior to the instant adjudication." S.C. Code Ann. §17-25-45(F).

In determining the number of offenses for the purpose of imposition of sentence, the court shall treat as one offense any number of offenses which have been committed at times so closely connected in point of time that they may be considered as one offense, notwithstanding under the law they constitute separate and distinct offenses.

S.C. Code Ann. §17-25-50.

S.C. Code Ann. §§17-25-45(F) and 17-25-50 must be construed together. State v. Gordon, 356 S.C. 143, 588 S.E.2d 105 (2003). §17-25-50 precludes an LWOP sentence “when the multiple offenses are inextricably connected and share an immediate temporal proximity.” Bryant v. State, 384 S.C. 525, 532, 683 S.E.2d 280, 284 (2009). In other words, §17-25-50 prevents the imposition of an LWOP sentence when the offense of conviction and the predicate offense(s) constitute “one continuous course of conduct.” Gordon at 151, 588 S.E.2d at 109. “The cases which have found ‘one continuous course of conduct’ under §17-25-50 have been cases in which, for example, the defendant had two convictions arising out of a single incident; or situations which involve crimes closely connected in point in time; or apply to a single, continuous crime spree.” Koon v. State, 372 S.C. 531, 533-534, 643 S.E.2d 680, 682 (2007) (internal citations omitted).

The Appellant would contend that where, as here, substantive facts of prior convictions are admitted as common scheme or plan evidence pursuant to Rule 404(b), SCRE, those prior convictions cannot be used as predicate offenses under the “continuous crime spree” definition of “one continuous course of conduct” given in Koon.¹² If evidence of another crime is so closely connected to the crime for which the defendant is on trial for committing, as was posited by the State in this case, then the “common scheme or plan” then the offenses must be “inextricably connected,” and should be treated as “one continuous course of conduct” worthy of §17-25-50’s protections. See Bryant, *supra* at 532, 683 S.E.2d at 284.

Even if the Court were disinclined to adopt such a blanket approach, the Rule 404(b), SCRE, and §17-25-50 considerations converged in this case. Specifically, the trial court found

¹² While under certain circumstances the facts may also lend themselves to the other two definitions provided in Koon, the Appellant does not contend that the two convictions at issue in this case arose out of a single incident or occurred closely in time.

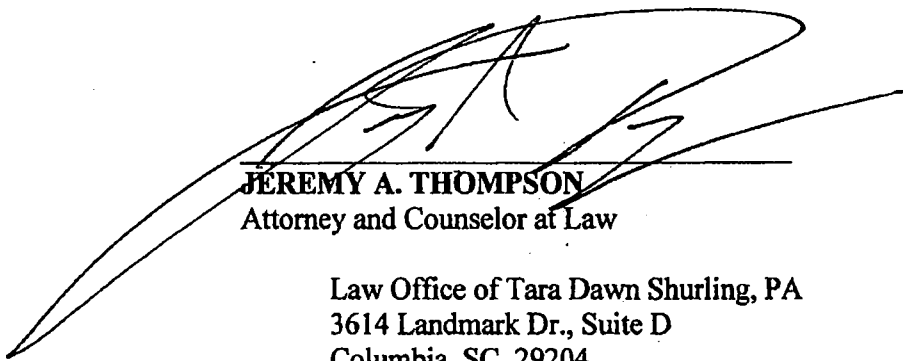
that the facts of the predicate offense and the facts of the current offense constituted a "pattern of continuous illicit conduct." ROA p. 138, lines 21-22. It logically follows that anything that meets the definition of "continuous illicit conduct" must be subsumed within the definition of a "continuous course of conduct." Both standards require a sequence of actions so closely connected with one another that the various actions are treated together under the law as one continuous action. The only meaningful difference between the two phrases is that "continuous illicit conduct" requires a sequence of *sexual* activity whereas "continuous course of conduct" can refer to *any* sequence of activities. If anything, a "continuous course of conduct" is *more* inclusive than "continuous illicit conduct."

The Supreme Court's prior decisions in this area only validate the Appellant's argument on this issue. In virtually every case applying §17-25-50, the Supreme Court has focused on the facts of each case and compared their similarities and dissimilarities to the predicate offenses. See Bryant v. State, *supra* at 533, 683 S.E.2d at 284 ("Bryant committed the three separate armed robberies on different days, at different locations, and the robberies involved different victims"); Koon v. State, *supra*, at 534, 643 S.E.2d at 682 ("We find the March 28th burglary of a different building, in a different location, which occurred two weeks later, clearly constitutes a separate burglary"); State v. Gordon, *supra* (finding that trafficking charges covering transactions on September 21-23, 1996, and September 27, 1996, should be considered one offense despite the fact that they constituted separate and distinct crimes). Such considerations are clearly the same as Rule 404(b), SCRE, considerations. See State v. Wallace, *supra* at 433, 683 S.E.2d at 278 (holding that when a court examines whether or not evidence should be admitted pursuant to the common scheme or plan exception, the court "must analyze the

CONCLUSION

The Appellant's convictions for criminal sexual conduct with a minor in the second degree and kidnapping should be reversed. Alternatively, the Appellant's convictions for criminal sexual conduct with a minor in the second degree should be reversed and this case should be remanded for a new trial. As a final alternative, the Appellant's sentences of life without parole should be vacated, and this case should be remanded for a resentencing.

Respectfully submitted,



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This 17th day of April, 2010.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM WILLIAMSBURG COUNTY
Court of General Sessions

George C. James, Circuit Court Judge

Case No. 2006-GS-45-176

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

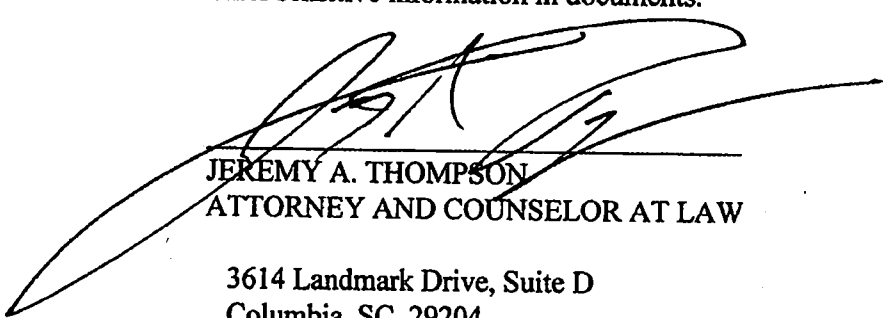
v.

ROBERT TROY TAYLOR,

APPELLANT.

CERTIFICATE OF COUNSEL

The undersigned attorney hereby certifies that certificate that this Final Brief of Appellant complies with Rule 211(b), SCACR. The undersigned also certifies that this Final Brief is in compliance with the August 13, 2007 Order of the Supreme Court of South Carolina relating to the inclusion of personal data identifiers and other sensitive information in documents.



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This 14th day of April, 2010.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Williamsburg County
Hon. George C. James, Circuit Court Judge

ORIGINAL
RECEIVED

APR 15 2010

SC Court of Appeals

The State,

Respondent,

v.

Robert Troy Taylor,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

- I. The trial court properly granted the State's motion to quash the jury pursuant to Batson v. Kentucky¹ based on the pretextual reason offered by counsel for striking a juror.
- II. The trial court properly admitted testimony related to the 1999 incident between Appellant and the victim to demonstrate a common scheme or plan, and the testimony's probative value clearly outweighed the danger of unfair prejudice. (Appellant's Issues II and III).
- III. The trial court properly denied Appellant's motion for a directed verdict.
- IV. The trial court properly sentenced Appellant to life without parole pursuant to section 17-25-45 of the South Carolina Code.

¹ 476 U.S. 79 (1986).

STATEMENT OF THE CASE

The State agrees with Appellant's procedural statement of the case.

STATEMENT OF FACTS

Appellant was the senior pastor of a community church in Murrells Inlet. The victim participated in youth activities at Appellant's church. (T.156-157; R.161-162). In November 1998, when the victim was 11 years old, Appellant invited the boys in the youth group to go on a camping trip next to the Black River outside of Andrews, South Carolina off Highway 521. (T.158-160; R.163-165). The boys all stayed under a large tarp, and Appellant had his own tent, which was used for the gear. (T.161; R.166).

The victim was awakened by Appellant, who covered the victim's mouth and carried him to Appellant's tent. Once inside the tent, Appellant took off the victim's clothes and touched him on his penis and anus. Appellant also made the victim touch him on the penis. Appellant then anally raped the 11-year-old victim. (T.161-162; R.166-167). When Appellant finished, he carried the victim back to the tarp where the other boys were sleeping, told him very sternly not to tell anyone, and then slept beside the victim the remainder of the night. (T.163; R.168).

During the summer of 1999, the victim went on another youth trip, this time to Huntington Beach State Park. (T.166; R.171). After a day at the beach, the church members met back at the church to shower. The showers were full so Appellant asked the victim and one other boy if they wanted to go to his house to shower. (T.167; R.172). While the victim was showering, Appellant entered the bathroom and took off his clothes. Appellant entered the shower with the victim, touched the victim on the penis and anus, and made the victim touch him in the same locations. Appellant then anally raped the 11-year-old victim for the second time. (T.169-170; R.174-175). When Appellant finished, he again told the victim

not to tell anyone. The victim did not tell Appellant's wife, who was home at the time of the attack, because he was scared and felt helpless. (T.171-172; R.176-177).

When the victim was 17 years old, he told a friend what happened to him on the two church youth trips. The friend told his aunt, a counselor, who convinced the victim to tell his parents. (T.177; R.182). The incidents were both reported to the Georgetown County Sheriff's Department. It was later determined the 1998 incident occurred in Williamsburg County, so the victim reported it to Sergeant Laura Rogers with the Williamsburg County Sheriff's Department. (T.178; 235-236; R.183; 230-231). Rogers, following directions given by the victim, found the location of the 1998 camping trip and determined it was in Williamsburg County. (T.192-193; 242-243; R. 187).

Appellant was indicted on charges of criminal sexual conduct with a minor in the second degree and kidnaping stemming from the 1998 incident. At trial, he attempted to exclude the victim's testimony regarding the 1999 incident. The court admitted the testimony and the jury found Appellant guilty as charged. He was sentenced to life without the possibility of parole.

ARGUMENT

I. The trial court properly granted the State's motion to quash the jury pursuant to Batson v. Kentucky based on the pretextual reason offered by counsel for striking a juror.

Appellant contends the trial court erred in quashing the first jury selected based on his discriminatory use of peremptory strikes. He asserts the reason he provided was race-neutral and not mere pretext. Appellant's trial counsel gave a reason which was mere pretext, and the pretext was shown by a demonstration of a similarly situated member of another race seated on the jury. The trial court, therefore, properly quashed the jury and required Appellant not to strike the juror when she was again selected.

In criminal cases, the appellate court sits to review errors of law only. State v. Wilson, 345 S.C. 1, 5-6, 545 S.E.2d 827, 829 (2001); State v. Butler, 353 S.C. 383, 388, 577 S.E.2d 498, 500 (Ct. App. 2003). The appellate court is bound by the trial court's factual findings unless they are clearly erroneous. Id. On review, this Court is limited to determining whether the trial court abused its discretion. State v. Edwards, 384 S.C. 504, ___, 682 S.E.2d 820, 822 (2009).

In Batson v. Kentucky, 476 U.S. 79, 89, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986), the Supreme Court, through the Equal Protection clause, forbade the use of peremptory challenges to strike jurors because of their race. See, State v. Haigler, 334 S.C. 623, 515 S.E.2d 88 (1999). In State v. Evins, the Supreme Court reiterated the procedure the trial court is to follow for a Batson hearing:

After a party objects to a jury strike, the proponent of the strike must offer a facially race-neutral explanation. Once the

proponent states a reason that is race-neutral, the burden is on the party challenging the strike to show the explanation is mere pretext, either by showing similarly situated members of another race were seated on the jury or that the reason given for the strike is so fundamentally implausible as to constitute mere pretext despite a lack of disparate treatment. The burden of persuading the court that a Batson violation has occurred remains at all times on the opponent of the strike.

State v. Evins, 373 S.C. 404, 415, 645 S.E.2d 904, 909 (2007) (citing State v. Adams, 322 S.C. 114, 470 S.E.2d 366 (1996); State v. Haigler, 334 S.C. 623, 515 S.E.2d 88 (1999)). South Carolina has rejected the "dual-motivation" doctrine in Batson cases, and instead, "South Carolina follows the 'tainted' approach whereby a discriminatory explanation for the exercise of a peremptory challenge will vitiate other nondiscriminatory explanations for the strike." State v. Rayfield, 357 S.C. 497, 503, 593 S.E.2d 486, 489 (Ct. App. 2004) (citing Payton v. Kears, 329 S.C. 51, 59, 495 S.E.2d 205, 210 (1998)).

The South Carolina Supreme Court recently explained:

Whether a Batson violation has occurred must be determined by examining the totality of the facts and circumstances in the record. The opponent of the strike carries the ultimate burden of persuading the trial court that the challenged party exercised strikes in a discriminatory manner. Appellate courts give the trial judge's finding great deference on appeal and review the trial judge's ruling with a clearly erroneous standard.

Edwards, 682 S.E.2d at 822 (internal citations omitted).

In the instant case, Appellant's counsel used eight peremptory challenges to strike white jurors, including Juror 146 who was an administrative assistant. Appellant's counsel explained:

I have found over the years that the more education jurors have the less likely they are to adopt arguments – they usually come with their own idea or agenda. Over the years, I've learned to shy away from jurors with higher education. And in addition to that, I also know her husband personally and we don't get along.

(JuryT.12; R.12). The State responded by identifying a similarly situated individual with a higher level of education. Juror 138 was identified as an accountant for eighteen years with Tupperware and had sixteen years of education.²

Appellant's counsel then tried to explain his strike of Juror 146 further, saying:

Well, she's an Administrative Assistant. Inasmuch as she would be in management that she would have got there by promotion or her qualification. Certainly she would have met the qualification to be in management. Bust she is in management. I do have the note that the lady [Juror 138] worked at Tupperware as an accountant. I know that probably at least a substantial number of Tupperware employees and I don't know a black person at Tupperware that is in management.

(JuryT.17; R.17). When questioned about the strike, Appellant's counsel again attempts to explain:

As I said, when I looked at the Administrative Assistant or administrative nature of this person's employment. Clearly, I recognized that she was a person that wasn't working in labor she was working in management. Perhaps I should have and I say that maybe I . . . a person with a education has a identity, but the workplace at Tupperware and I don't know of any black people in management at Tupperware.

(JuryT.34; R.34).

²The State also noted Juror 82 completed fourteen years of education, which is more than Juror 146, struck by Appellant on the grounds of her education. (Jury T.18; R.18).

The trial court ultimately concluded the reason given for the strike of Juror 146 was mere pretext and found the strike violated Batson. (Jury T.37; 39; R.37; 39). The trial court quashed the jury and ordered a new jury be selected. Appellant was not allowed to strike Juror 146 during the second jury selection, and she was seated on the jury. (T.7; R.43).

The trial court properly concluded the grounds for striking Juror 146 were mere pretext. His initial reason for striking Juror 146 was due to her higher level of education. A juror was seated with more education than Juror 146, and when the State noted this fact, Appellant's counsel tried to change his explanation by redefining education to mean her position and the fact as an administrative assistant she was clearly in management. Again this explanation rings hollow when Juror 146 is compared to the same juror, Juror 138, who was an accountant for Tupperware, clearly someone as much or more involved in management than an administrative assistant.

As found by the trial court, Appellant's grounds for striking Juror 146 were mere pretext. The State demonstrated the pretext by offering examples of individuals who were similarly situated, no matter which definition of education Appellant attempted to utilize to justify his strike. The trial court properly quashed the jury and Appellant was properly denied the opportunity to strike Juror 146 when she was selected for the second jury.

II. The trial court properly admitted testimony related to the 1999 incident between Appellant and the victim to demonstrate a common scheme or plan, and the testimony's probative value clearly outweighed the danger of unfair prejudice. (Appellant's Issues II and III).

Appellant contends the trial court erred in admitting testimony of Appellant's 1999 anal rape of the victim as another bad act under Rule 404(b), SCRE and State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923). Further, Appellant maintains the evidence was unfairly prejudicial and its prejudicial nature outweighs its probative value. The evidence, however, clearly demonstrates a common scheme or plan and is admissible. The trial court also properly found the testimony was not unfairly prejudicial under Rule 403, SCRE.

Evidence of other bad acts is not admissible to prove the defendant's guilt except to show motive, identity, existence of a common scheme or plan, absence of mistake or accident, or intent. Rule 404(b); see also, Lyle, 125 S.C. 406, 118 S.E. 803.³ When there is a close degree of similarity between the crime charged and the prior bad act, both this Court and the South Carolina Supreme Court have held prior bad acts are admissible to demonstrate a common scheme or plan. See e.g., State v. Gaines, 380 S.C. 23, 30, 667 S.E.2d 728, 731 (2008). "When determining whether evidence is admissible as common scheme or plan, the trial court must analyze the similarities and dissimilarities between the crime charged and the bad act evidence to determine whether there is a close degree of similarity." State v. Wallace, 384 S.C. 428, 433, 683 S.E.2d 275, 277-78 (2009). "When the

³The other bad act resulted in a conviction as a result of a guilty plea by Appellant so there is no need for the other bad act to be proved by clear and convincing evidence and Appellant does not challenge the proof of the other bad act.

similarities outweigh the dissimilarities, the bad act evidence is admissible under Rule 404(b)." Id.

The South Carolina Supreme Court further explained:

[T]he trial court should consider the following factors when determining whether there is a close degree of similarity between the bad act and the crime charged: (1) the age of the victims when the abuse occurred; (2) the relationship between the victims and the perpetrator; (3) the location where the abuse occurred; (4) the use of coercion or threats; and (5) the manner of the occurrence, for example, the type of sexual battery.

Id. at 433-34; 683 S.E.2d at 278 (citing State v. Hallman, 298 S.C. 172, 379 S.E.2d 115 (1989); State v. McClellan, 283 S.C. 389, 323 S.E.2d 772 (1984)).

The similarities between the 1998 anal rape, for which Appellant was on trial, and the 1999 anal rape, for which he pled guilty and the State sought to admit as a common scheme or plan, greatly outweigh the differences. The incidents occurred between Appellant and the same victim, roughly six months apart, clearly indicating the victim's age was very similar. At the time of both incidents, Appellant was the pastor of the church the child victim attended. Both incidents occurred while the child victim and Appellant were involved in a youth trip with the church.

The methods used by Appellant in both incidents were very similar. In both occurrences, Appellant separated the child victim from the remainder of the church group. During both the 1998 act and the 1999 act, Appellant touched the child victim on his penis and anus and made the child touch Appellant's penis and anus. After the touching, Appellant

anally raped the child victim. When finished with the sodomization, he threatened the child not to tell anyone what had happened.

While the physical locations may have been different, all four other factors listed in Wallace are extremely similar between the 1998 and 1999 acts. Even the location is somewhat similar in the sense that both incidents occurred while on church youth trips. The trial court correctly found the 1999 act was evidence of a common scheme or plan and, therefore, admissible under Rule 404(b) and Lyle.

Additionally, the two incidents evidenced continued illicit conduct between Appellant and the child victim and were, therefore, admissible. See e.g., State v. Clasby, 385 S.C. 148, 682 S.E.2d 892, 897 (2009) (holding “[t]he four prior incidents of sexual misconduct by Clasby reveal the same illicit conduct with [the victim] during periods of visitation prior to the . . . indicted offenses”); State v. Kirton, 381 S.C. 7, 36, 671 S.E.2d 107, 121-22 (Ct. App. 2008) (holding the “six to seven year pattern of escalating abuse of Victim by [defendant was] the essence of grooming and continuous illicit activity”); State v. Mathis, 359 S.C. 450, 464, 597 S.E.2d 872, 879 (Ct. App. 2004) (concluding the “three earlier assaults on the victim were all attempted in the same manner and under similar circumstances”); State v. Weaverling, 337 S.C. 460, 471, 523 S.E.2d 787, 792 (Ct. App. 1999) (finding the “challenged testimonial evidence of [defendant’s] prior bad acts show the same illicit conduct with the same victim under similar circumstances over a period of several years”). Accordingly, the trial court did not err in finding the victim’s testimony regarding the 1999 act was admissible as evidence of continuous illicit conduct and a common scheme or plan.

Further, the trial court did not err in finding the testimony was not unfairly prejudicial. "Even if prior bad act evidence is clear and convincing and falls within an exception, it must be excluded if its probative value is substantially outweighed by the danger of unfair prejudice to the defendant." Clasby, 682 S.E.2d at 896 (citing Rule 403, SCRE; Gaines, 380 S.C. at 29, 667 S.E.2d at 731; State v. Gillian, 373 S.C. 601, 609, 646 S.E.2d 872, 876 (2007)). "The determination of the prejudicial effect of the evidence must be based on the entire record and the result will generally turn on the facts of each case." Id. (citing State v. Fletcher, 379 S.C. 17, 24, 664 S.E.2d 480, 483 (2008)).

In the instant case, the probative value of the testimony clearly outweighs its prejudicial impact. In light of the passage of time and lack of physical evidence linking Appellant to the crime, the child victim's testimony of the common scheme or plan and continuous illicit conduct between the 1998 and 1999 acts is highly probative of Appellant's guilt. Accordingly, the trial court did not err in admitting the testimony regarding the 1999 bad act.

III. The trial court properly denied Appellant's motion for a directed verdict.

Appellant contends the trial court erred in denying his motion for a directed verdict, arguing the State failed to present evidence the crime occurred in Williamsburg County. The victim and the investigating officer testified to the location so sufficient evidence demonstrating proper venue was presented at trial.

"A criminal defendant is entitled to a directed verdict when the State fails to present evidence that the offense was committed in the county alleged in the indictment." State v. Williams, 321 S.C. 327, 333, 468 S.E.2d 626, 630 (1996) (quoting State v. Evans, 307 S.C. 477, 480, 415 S.E.2d 816, 818 (1992), overruled in part by State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005)). "The standard for establishing venue is not a stringent one, for 'venue, like jurisdiction, in a criminal case need not be affirmatively proved, and circumstantial evidence of venue, though slight, is sufficient. . . ." State v. Crocker, 366 S.C. 394, 404, 621 S.E.2d 890, 895 (Ct. App. 2005) (quoting Williams, 321 S.C. at 334, 468 S.E.2d at 630). Venue in a criminal case need not be affirmatively proved if there is sufficient evidence from which it can be inferred. State v. Brisbon, 323 S.C. 324, 327, 474 S.E.2d 433, 435 (1996).

During trial, the victim testified the camping trip took place outside the town of Andrews, South Carolina along the Black River. (T.159-160; R.164-165). The victim's mother also testified the camping trip took place "the other side of Andrews." (T.86; R.91). Further, the victim stated he gave directions to the location to law enforcement so they could find the camping site. (T.192-193; 215; R.187-188; 210). Finally, the victim testified he originally filed the complaint in Georgetown County, but then discussed it with

Williamsburg County after it was determined to have occurred in Williamsburg County (T.224-225; R.219-220).

Sergeant Rogers testified the victim gave her directions to the camping locations in his oral and written statements. She testified she followed those directions, saw the landmarks he referenced, and determined the camping trip occurred in Williamsburg County. (T.252-253; R.247-248). Further, Sergeant Rogers testified there was no doubt in her mind the 1998 incident took place in Williamsburg County. (T.252; R.247). Finally, she testified on cross-examination that the location she found based on the victim's directions were "familiar to what he had explained."

The testimony of these three witnesses provides sufficient evidence from which the jury could, and obviously did, infer the crime took place in Williamsburg County. As a result, the trial court properly denied Appellant's motion for a directed verdict.

IV. The trial court properly sentenced Appellant to life without parole pursuant to section 17-25-45 of the South Carolina Code.

Appellant contends the trial court erred in sentencing Appellant to life without parole (LWOP). He maintains the conviction for the 1998 and the conviction for the 1999 incident should be considered as one offense under section 17-25-50 of the South Carolina Code so as to preclude LWOP under section 17-25-45 of the South Carolina Code. Appellant asserts because the 1999 conviction was admitted pursuant to Rule 404(b) to demonstrate a common scheme or plan or as evidence of continuous illicit conduct, it should be considered one offense with the 1998 offense under section 17-25-50. This issue is not properly preserved for review on appeal. It is completely without merit.

First, this issue is not preserved for review on appeal. An issue cannot be raised for the first time in a post-trial motion if it could previously have been raised to the trial court. See e.g., State v. King, 334 S.C. 504, 514 S.E.2d 578 (1999); Patterson v. Reid, 318 S.C. 183, 456 S.E.2d 436 (Ct. App. 1995). Further, a party may not raise one issue at trial and attempt to argue a different issue on appeal. State v. Haselden, 353 S.C. 190, 196, 577 S.E.2d 445, 448 (2003) (defendant may not argue one ground below and another on appeal); State v. Byram, 326 S.C. 107, 485 S.E.2d 360 (1997) (party cannot argue one ground below and then argue different ground on appeal).

During sentencing, Appellant maintained LWOP was not appropriate because of the timing of the convictions. He maintained the conviction for the 1999 incident should not be considered when determining if the conviction for the 1998 incident results in a sentence of LWOP. (T.412-415; R.322-325). At the hearing on Appellant's motion to reconsider,

Appellant maintained for the first time the sentence to LWOP was not appropriate because the two convictions should be considered one under section 17-25-50. (9/27T.5-6; 8-9; R.345-346; 348-349). Accordingly, the issue should not be considered by this Court.

Further, the issue is utterly without merit. Pursuant to section 17-25-45:

(A) Notwithstanding any other provision of law, . . . , upon a conviction for a most serious offense as defined by this section, a person must be sentenced to a term of imprisonment for life without the possibility of parole if that person has one or more prior convictions for:

(1) a most serious offense.

S.C. Code Ann. § 17-25-45(A)(1) (Supp. 2008). Criminal sexual conduct with a minor is considered a most serious offense. S.C. Code Ann. § 17-25-45(C)(1) (Supp. 2008). Appellant's conviction for criminal sexual conduct with a minor resulting from the 1999 offense constituted his first "most serious" conviction. The trial court properly found the instant conviction for criminal sexual conduct with a minor in the second degree related to the 1998 incident constitutes his second "most serious" conviction requiring a sentence of LWOP.

Section 17-25-45 must be read in light of the requirements in section 17-25-50. See S.C. Code Ann. § 17-25-45(F) (Supp. 2008); State v. Gordon, 356 S.C. 143, 588 S.E.2d 105 (2003), *overruled in part*, Bryant v. State, 384 S.C. 525, 683 S.E.2d 280 (2009).⁴ Section 17-25-50 states:

⁴ Section 17-25-45(F) was amended in 2006 to include a specific reference to section 17-25-50. Prior to 2006, the Supreme Court required sections 17-25-45 and 17-25-50 be construed together and retroactively applied the requirement. Gordon, 356 S.C. at 154, 588 S.E.2d at 111.

In determining the number of offenses for the purpose of imposition of sentence, the court shall treat as one offense any number of offenses which have been committed at times so closely connected in point of time that they may be considered as one offense, notwithstanding under the law they constitute separate and distinct offenses.

S.C. Code Ann. § 17-25-50 (Supp. 2008).

The South Carolina Supreme Court recently interpreted section 17-25-50:

We acknowledge the "so closely connected in point of time" language in section 17-25-50 may become ambiguous as applied to certain situations. When construing statutes forming part of the same legislative scheme, we must examine the statutes together as a whole. Accordingly, when we read the unambiguous timing feature of "a prior conviction" under section 17-25-45(F) alongside section 17-25-50, we construe the language of section 17-25-50 to preclude a life without parole sentence when the multiple offenses are inextricably connected and share an immediate temporal proximity.

Bryant, 384 S.C. at 532, 683 S.E.2d at 283-84 (2009) (emphasis added).

Appellant's attempt to argue the 1998 and 1999 offenses are "inextricably connected and share an immediate temporal proximity" because they are part of a common scheme or plan under Rule 404(b) is without basis. Rule 404(b) requires similar behavior such that proof of one bad act constitutes probative evidence of the commission of the charged crime. While evidence of continuous illicit conduct is admissible under Rule 404(b) to further demonstrate a common scheme or plan, the conduct does not have to occur in such close proximity as to constitute one offense under section 17-25-50.

In addition, this case is clearly distinguishable from the facts in Gordon where the two crimes arose out of the same drug transaction, or in State v. Woody in which the two

armed robbery convictions arose from the robbery of the clerk and the store during the same incident. State v. Woody, 359 S.C. 1, 596 S.E.2d 907 (2004). In this case, while the victims and circumstances were clearly similar such that the proof of the 1999 acts was strong proof of the 1998 acts, the offenses were not part of one general crime spree or one series of events such that application of the recidivist statute is precluded by section 17-25-50.

Appellant's argument clearly runs contrary to the legislative intent behind sections 17-25-45 and -50 and is contrary to the interpretation of the South Carolina Supreme Court. If the Court accepts Appellant's argument, then the effect is a defendant can never be classified as a recidivist as long as his crimes are similar in nature and affect only one victim. The fact the offenses occur two months, six months, or a year apart is irrelevant in Appellant's interpretation; it is solely the similarities between the crimes that precludes the application of the recidivist statute. This Court should reject Appellant's argument and affirm Appellant's sentence to LWOP.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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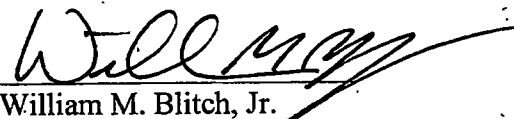
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April 15, 2010

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Williamsburg County
Hon. George C. James, Circuit Court Judge

The State,

Respondent,

v.

Robert Troy Taylor,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

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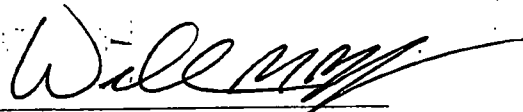
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PROOF OF SERVICE

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I further certify that all parties required by Rule to be served have been served.
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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM WILLIAMSBURG COUNTY
Court of General Sessions

George C. James, Circuit Court Judge

Case No. 2006-GS-45-176

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

ROBERT TROY TAYLOR,

APPELLANT.

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¹ Batson v. Kentucky, 476 U.S. 79 (1986).

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ARGUMENT IN REPLY²

I. The lower court improperly found that the Appellant's reason for striking of Juror #146 was pretextual and improperly granted the State's Batson motion.

The State argues that the Appellant's reason for striking Juror #146 was mere pretext because the State "offer[ed] examples of individuals who were similarly situated [to Juror #146], no matter which definition of education Appellant attempted to utilize to justify his strike." Brief of Respondent at 8. In other words, the State argues that the Appellant's reason for striking Juror #146 was pretextual because: (1) the Appellant shifted explanations to avoid a finding of pretext; or (2) even if his explanations were consistent, the State still showed that the Appellant seated someone similarly situated of a different race. These contentions are without merit.

With regard to the first argument—that the Appellant shifted explanations—the State argues that "[a] juror was seated with more education than Juror 146, and when the State noted this fact," the Appellant's attorney scrambled to find another explanation that would justify his strike. Brief of Respondent at 8. There is a critical link missing in the State's chain of logic. At trial, when the assistant solicitor noted that Juror #138 had more education than Juror #146, the Appellant's attorney explained that he was unaware of the specific levels of education of each of the jurors. See ROA p. 16, lines 20-21; p. 34, lines 13-16. Instead, he struck jurors based on his belief that individuals "who are in management ... do come in with an agenda." ROA p. 35, lines 6-10. He explained that "when I talk about education, I'm talking about the actual position a person is in." ROA p. 34, lines 10-11.

² Due to the number of issues involved in this case, and in order to maintain consistency throughout the briefs and to limit confusion, the Appellant will use the issue headings from his Brief to order his corresponding arguments in this Reply.

Given the Appellant's attorney's explanation that he was not concerned about the specific level of education of *any* of the jurors, it is clear that he simply misspoke when providing his initial explanation for why he struck Juror #146. His true reason for striking Juror #146—her involvement in management—was consistent throughout his explanation to the trial court. It is clear that the trial court erred in finding that Juror #138 was similarly situated on the basis of education alone.

With regard to the second argument—that if the management explanation is accepted, then Juror #138 is still similarly situated, which renders the management explanation pretextual—the State argues that Juror #138, as an accountant, is “clearly someone as much or more involved in management than an administrative assistant.” Brief of Respondent at 8. While the Appellant would note that the trial court did not find that Juror #138 was similarly situated on the basis of management, instead explicitly finding that Juror #138 was similarly situated because of the level of education,³ this argument advanced by the State fails as well. The Appellant's attorney unquestionably stated that he did not know any African-American individuals who were in management at Tupperware, where Juror #138 worked. See ROA p. 34, lines 20-24. Given that defense counsel *knew*, by virtue of her race and her place of employment, that Juror #138 would not be in management, she cannot be similarly situated on the basis that she would have the same level of involvement in management that Juror #146 would have. Therefore, the Appellant's strike of Juror #146 was not pretextual on this basis either.

³ See ROA p. 37, lines 7-16. Though not specifically stated as such by the State, the Appellant interprets this argument as an additional sustaining ground supporting affirmance. See Rule 220(c), SCACR (“The appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal”).

The point of Batson and its progeny is to "forbid[] intentional discrimination" by attorneys excluding jurors for impermissible reasons such as the juror's race or gender. J.E.B. v. Alabama, 511 U.S. 127, 129 (1994). In the present case, while the Appellant's attorney may have been inarticulate in providing his reasoning for striking Juror #146, it is clear that he did not intentionally strike her because she was white. Accordingly, no intentional discrimination took place in this case, and the trial court erred in concluding otherwise. The Appellant is entitled to a new trial.

- II. The lower court improperly found that the facts of the 1999 incident should be admitted as common scheme or plan evidence.
- III. The lower court improperly found that the probative value of the 1999 incident was not substantially outweighed by the danger of unfair prejudice to the Appellant.

The State argues that evidence of the 1999 incident should be admitted because the similarities between that crime and the 1998 incident “greatly outweigh” the dissimilarities and because “the two incidents evidenced continued illicit conduct between Appellant and the child victim.” Brief of Respondent at 10-11. These contentions are meritless.

When a court examines whether or not evidence should be admitted pursuant to the common scheme or plan exception, the court “must analyze the similarities and dissimilarities between the crime charged and the bad act evidence to determine whether there is a close degree of similarity.” State v. Wallace, 384 S.C. 428, 433, 683 S.E.2d 275, 278 (2009). “When the similarities outweigh the dissimilarities, the bad act evidence is admissible under Rule 404(b).” Id.; see also State v. Clasby, 385 S.C. 148, 682 S.E.2d 892 (2009).

In Wallace, the Supreme Court was presented with a criminal sexual conduct case where the State sought to admit testimony from the victim’s sister that she had been sexually abused by the defendant as well. 384 S.C. at 431-432, 683 S.E.2d at 276-277. The Supreme Court found that

[I]n this type of case, the trial court should consider the following factors when determining whether there is a close degree of similarity between the bad act and the crime charged: (1) the age of the victims when the abuse occurred; (2) the relationship between the victims and the perpetrator; (3) the location where the abuse occurred; (4) the use of coercion or threats; and (5) the manner of the occurrence, for example, the type of sexual battery.

Id. at 433-434, 683 S.E.2d at 278 (emphasis added).

In its Brief, the State excerpts this same portion of Wallace, except that it omits the italicized portion, and argues that “[w]hile the physical locations may have been different, all four other factors listed in Wallace are extremely similar between the 1998 and 1999 acts.” Brief of Respondent at 10-11. The Appellant would assert that the State’s reliance on the five factors listed in Wallace is misplaced, and that the italicized portion is critical to the applicability of the five factors in this case. Wallace dealt with multiple victims while this case deals with multiple acts allegedly committed against the same victim. The factors given by Wallace are limited to that “type of case”; i.e., a criminal sexual conduct case where there are multiple victims. The first two factors listed in Wallace—the age of the victim and the relationship between the victim and the defendant—are largely irrelevant when presented with a case such as this one because those factors would almost always remain constant. To rely on those two factors as evidence of similarity between the crime and the other bad act in a case such as this would result in an almost impossible burden for a criminal defendant to defeat.⁴ Therefore, the Appellant would argue that this Court should not use the first two factors listed in Wallace as evidence of similarities between the 1998 and 1999 incidents.

With respect to the other three factors listed in Wallace, the Appellant would reiterate his contention that while the physical acts alleged to have occurred in each incident were the same, the other circumstances surrounding the two incidents are completely dissimilar. See Brief of Appellant at 14-15.⁵

⁴ The Appellant would note that in Clasby, a case dealing with prior sexual assaults against the same victim, similar to this case, the Supreme Court cited Wallace for support and identified only the last three factors listed in Wallace as the primary important considerations: “See Wallace (holding that in weighing the similarities and dissimilarities between the crime charged and the bad act evidence a trial court should consider, among other factors, the location where the abuse occurred, the use of coercion or threats, and the manner of the occurrence, for example, the type of sexual battery).” 385 S.C. at 157, 682 S.E.2d at 896.

⁵ In the State’s Brief, the State argued that “both incidents occurred while on church youth trips” and that “[b]oth incidents occurred while the child victim and Appellant were involved in a youth trip with the church.” Brief of

The State also argues that the evidence of the 1999 act was admissible to show continued illicit conduct between the Appellant and the victim. This Court has held that to meet that threshold, the State must show something more than "a few isolated, unrelated incidents" between the victim and the defendant to admit evidence under such a theory. State v. Kirton, 381 S.C. 7, 36, 671 S.E.2d 107, 122 (Ct. App. 2008). Furthermore, the Appellant has been unable to find *any* decision by this Court or the Supreme Court, and the Respondent does not cite to one, where only *one* other bad act, taking place months after the original crime, has been found to be sufficient to admit evidence under a continued illicit conduct theory of admissibility. Every decision addressing continued illicit conduct has involved multiple incidents between the same parties. See generally State v. Clasby, supra; State v. Kirton, supra; State v. Edwards, 373 S.C. 230, 644 S.E.2d 66 (Ct. App. 2007); State v. Mathis, 359 S.C. 450, 597 S.E.2d 872 (Ct. App. 2004); State v. Weaverling, 337 S.C. 460, 523 S.E.2d 787 (Ct. App. 1999).⁶

The admissibility of the 1999 incident rises and falls with its similarities to the 1998 incident. The physical acts performed in each incident are the same. However, everything else about the two incidents is dissimilar: the method used to separate the victim from the group; the fact that the Appellant took another individual to his home, along with the victim in 1999; the time of day; the location; the acts taken by the Appellant immediately following the alleged physical assaults; and the willingness of the victim to go with the Appellant in 1999 as opposed to being physically carried away from the group in 1998. The dissimilarities greatly outweigh

Respondent at 10-11. The Appellant would contend that evidence of his involvement with the 1999 youth trip to the beach is less than clear. While the victim testified *in camera* that the Appellant drove the children to the beach, see ROA p. 113, lines 22-25; he later testified in front of the jury that he did not remember the names of the adults who took the youth group to the beach. See ROA p. 170, line 17-p. 171, line 3.

⁶ In State v. Whitener, 228 S.C. 244, 89 S.E.2d 701, 711 (1955), the Supreme Court held that multiple sex acts that took place over the course of an afternoon would be admissible under the continued illicit intercourse theory when the defendant was charged with committing only one of the acts. Such a case is clearly distinguishable from the facts of this case.

the only similarity between the crimes—the physical act itself. Evidence of the 1999 incident was inadmissible, and the Appellant should be granted a new trial.

IV. The lower court improperly denied the Appellant's motion for a directed verdict on the ground that the State had failed to prove that the offense occurred in Williamsburg County.

The State argues that the testimony of the victim, his mother, and Sergeant Rogers "provides sufficient evidence from which the jury could, and obviously did, infer the crime took place in Williamsburg County." Brief of Respondent at 14. Any reliance on the jury's verdict is misplaced, as juries can, and do, find defendants guilty of crimes even when directed verdict motions should have been granted on those charges. See generally State v. Hernandez, 382 S.C. 620, 677 S.E.2d 603 (2009); State v. Frazier, 375 S.C. 575, 654 S.E.2d 280 (Ct. App. 2007). In other words, the fact that the jury found the Appellant guilty is not evidence that the crime actually occurred in Williamsburg County.

Additionally, the Appellant would reiterate his argument that *none* of these witnesses provided evidence sufficient to survive a directed verdict motion. The victim's mother testified that she, by the victim, that was told the camping trip occurred in Williamsburg County. See ROA p. 90, line 22-p. 91, line 5. The victim testified that he was told the camping trip occurred in Williamsburg County because he was told so by someone else. See ROA p. 224, lines 8-18. Sergeant Rogers testified that she followed the victim's directions to the campsite, without the victim present, and found a location that "was familiar to what [the victim] had explained." ROA p. 253, line 9-p. 254, line 4. This testimony is the only evidence of venue, and it is simply not sufficient to establish venue in Williamsburg County.⁷ Consequently, the Appellant was entitled to a directed verdict, and his convictions should be reversed.

⁷ In particular, no reliance should be placed on the testimony of the victim and his mother. Simply saying that they believed the offense to be committed in Williamsburg County is not actually evidence that anything occurred in Williamsburg County. If their testimony is sufficient to deny a motion for a directed verdict based on venue, then such motions would never be granted.

V. The lower court improperly sentenced the Appellant to life without parole because the substantive facts of the predicate offense were admitted as common scheme or plan evidence.

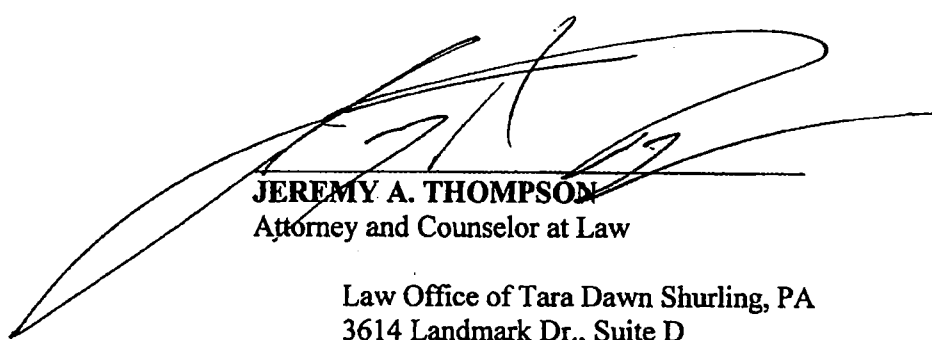
The State argues that this issue is not preserved for appeal because the Appellant did not raise this issue to the trial court immediately following the jury's verdict. This issue is unquestionably preserved. During sentencing, the Appellant argued that "our position is that this offense does not qualify for life without parole." ROA p. 322, lines 12-13. After brief argument, the trial court denied this motion and explicitly stated that "if you want to make a motion for reconsideration ... you can certainly do that." ROA p. 325, lines 16-18. Given that the trial court left the door open for the Appellant to make additional arguments against the imposition of the LWOP sentence if he filed a motion to reconsider sentence, the issue is preserved for appeal.

With regard to the other arguments advanced by the Respondent on this issue as to why the Appellant's sentences should be affirmed, the Appellant would rely upon the arguments raised in his Brief of Appellant.

CONCLUSION

The Appellant's convictions for criminal sexual conduct with a minor in the second degree and kidnapping should be reversed. Alternatively, the Appellant's convictions for criminal sexual conduct with a minor in the second degree should be reversed and this case should be remanded for a new trial. As a final alternative, the Appellant's sentences of life without parole should be vacated, and this case should be remanded for a resentencing.

Respectfully submitted,



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ATTORNEY FOR THE APPELLANT

This 14th day of April, 2010.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM WILLIAMSBURG COUNTY
Court of General Sessions

George C. James, Circuit Court Judge

Case No. 2006-GS-45-176

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

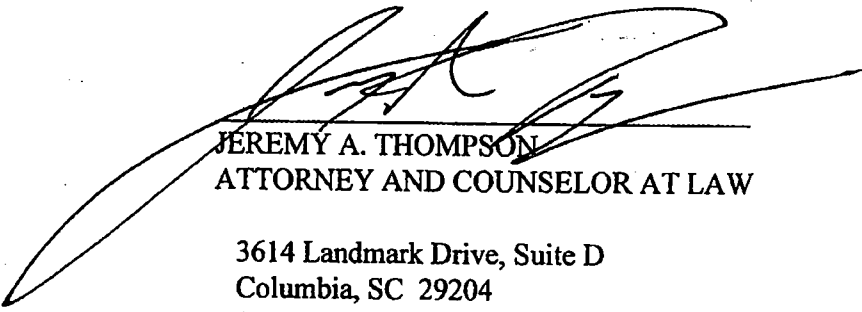
v.

ROBERT TROY TAYLOR,

APPELLANT.

CERTIFICATE OF COUNSEL

The undersigned attorney hereby certifies that certificate that this Final Reply Brief of Appellant complies with Rule 211(b), SCACR. The undersigned also certifies that this Final Brief is in compliance with the August 13, 2007 Order of the Supreme Court of South Carolina relating to the inclusion of personal data identifiers and other sensitive information in documents.



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ATTORNEY FOR APPELLANT.

This 17th day of April, 2010.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State,

Respondent,

v.

Robert Troy Taylor,

Appellant.

Appeal from Williamsburg County
Judge George C. James, Circuit Court Judge

Opinion No. 4920
Heard March 10, 2011 – Filed December 21, 2011

AFFIRMED

Jeremy Adam Thompson, of Columbia, for
Appellant.

Assistant Deputy Attorney General Salley W. Elliott,
of Columbia, for Respondent.

LOCKEMY, J.: Robert Troy Taylor appeals his convictions and sentence of life without parole for criminal sexual conduct with a minor in the second degree and kidnapping. Taylor argues the trial court erred in (1) granting the State's Batson motion, (2) admitting evidence of Taylor's prior conviction for criminal sexual conduct with a minor, (3) denying his motion

for a directed verdict, and (4) sentencing him to life without parole. We affirm.

FACTS

Taylor was the pastor of the church Victim attended in Murrells Inlet, South Carolina. In November 1998, when Victim was 11, Taylor organized a camping trip with Victim and a group of six or seven boys from the church. Taylor took the boys to an area "just outside [the city of] Andrews" on Highway 521 and the group hiked about a mile into the woods to a campsite "right next to the Black River." Taylor and the boys set up a tent and a large tarp, made a fire, and cooked food. At approximately 11 p.m., the boys retired to their sleeping bags under the tarp. Later that night, Taylor woke Victim, placed his hand over Victim's mouth, and carried him to the tent. Once inside the tent, Taylor removed Victim's clothes and forced Victim to touch his penis and anus. Taylor also touched Victim's penis and anus. Next, Taylor raped Victim. After raping Victim, Taylor instructed Victim not to reveal the rape to anyone and returned Victim to his sleeping bag. Taylor slept next to Victim and held him throughout the course of the night.

In August 1999, Taylor and a few other adults from the church organized a trip to the beach. After leaving the beach, the group returned to the church to use the showers. Once all the showers were occupied, Taylor asked Victim and another boy if they would like to use the showers at his house. Victim and the other boy accompanied Taylor to his home near the church. While Victim was showering, Taylor entered the bathroom, removed his clothes, and entered the shower. Taylor forced Victim to touch his penis and Taylor touched Victim's penis and anus. Next, Taylor raped Victim. After raping Victim, Taylor instructed Victim not to divulge the rape to anyone. Taylor drove Victim and the other boy back to the church.

Approximately five years after the 1999 rape, Victim, then 17, told his parents about the two rapes. Taylor was indicted for second degree criminal sexual conduct with a minor in Georgetown County for the 1999 rape. Taylor pled guilty and was sentenced to eight years' imprisonment suspended upon the service of five years and three years' probation. In May 2006, Taylor was indicted for second degree criminal sexual conduct with a minor

and kidnapping for the 1998 rape. The State served Taylor with notice of its intent to seek a sentence of life without parole pursuant to section 17-25-45 of the South Carolina Code (Supp. 2010). Taylor was convicted on both counts and the trial court sentenced him to life without parole. This appeal followed.

STANDARD OF REVIEW

"In criminal cases, the appellate court sits to review errors of law only." State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). Thus, an appellate court is bound by the trial court's factual findings unless they are clearly erroneous. Id.

LAW/ANALYSIS

I. Batson

Taylor argues the trial court's finding that his strike of Juror 146 was racially motivated is clearly erroneous. We disagree.

"The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution prohibits the State from striking a venire[]person on the basis of race." State v. Hicks, 330 S.C. 207, 211, 499 S.E.2d 209, 211 (1998) (citing Batson v. Kentucky, 476 U.S. 79 (1986)). The trial court must hold a Batson hearing when members of a cognizable racial group are struck and the opposing party requests a hearing. State v. Haigler, 334 S.C. 623, 629, 515 S.E.2d 88, 90 (1999). First, the proponent of the strike must present a race or gender neutral explanation for the challenged strike. Id. In response the opponent of the strike must show the race or gender neutral explanation given by the proponent was mere pretext. Id. at 629, 515 S.E.2d at 91. Pretext is generally established by showing similarly situated members of another race or gender who were seated on the jury. Id.

"Whether a Batson violation has occurred must be determined by examining the totality of the facts and circumstances in the record." State v. Edwards, 384 S.C. 504, 509, 682 S.E.2d 820, 822 (2009). The trial court's finding of purposeful discrimination rests on its evaluation of demeanor and

credibility. Id. at 509, 682 S.E.2d at 823. "Often the demeanor of the challenged attorney will be the best and only evidence of discrimination, and an 'evaluation of the [attorney's] mind lies peculiarly within a trial [court's] province.'" Id. (quoting Hernandez v. New York, 500 U.S. 352, 365 (1991)). This court will give the trial court's finding great deference on appeal and review the trial court's ruling with a clearly erroneous standard. Edwards, 384 S.C. at 509, 682 S.E.2d at 822.

Here, the State moved to quash the jury after Taylor used ten strikes to strike white jurors. In regard to Juror 146, Taylor noted Juror 146 was an administrative assistant and offered the following explanation:

I have found over the years that the more education jurors have the less likely they are to adopt argument—they usually come with their own idea or agenda. Over the years, I[have] learned to shy away from jurors with higher education. And, in addition to that, I also know her husband personally and we just do [not] get along.¹

In response, the State pointed to Juror 138, an accountant, as a similarly situated African-American juror with equal or more education than Juror 146. The trial court inquired regarding Taylor's reasoning for concluding Juror 146 had a high level of education. Taylor responded: "Well, she [is] an [a]dministrative [a]ssistant. Inasmuch as she would be in management that she would have got there by promotion or her qualification[s]. Certainly she would have met the qualification to be in management. But she is in management."

Before ruling on the State's Batson motion, the trial court allowed Taylor to revisit his explanation for striking Juror 146. Taylor explained that

¹ Taylor has not argued on appeal that defense counsel's poor personal relationship with Juror 146's husband was a proper race neutral explanation for the strike. Accordingly, we are precluded from addressing the issue. See State v. Carriker, 269 S.C. 553, 555, 238 S.E.2d 678, 678 (1977) (finding issue unpreserved because it was not raised by the appellant).

in striking Juror 146 based upon her education level, in essence, he was striking her based upon her position in management. According to Taylor, jurors with management level employment "come with an agenda" and are "constantly manifesting their discretion as it relates to how you handle people." Ultimately, the trial court found Taylor offered a race neutral explanation for the other nine strikes he used. However, the trial court found Taylor's strike of Juror 146 violated Batson because he accepted Juror 138 with more formal education and a higher level employment position. A jury was re-struck and Juror 146 was seated on the jury.

We are concerned with the potential for prejudice with Juror 146 seated on the re-struck jury. However, based on our standard of review, we are unable to find anything clearly erroneous in the trial court's determination Taylor failed to offer a race neutral explanation for striking Juror 146. Taylor explained he struck Juror 146 based on her education and/or employment level. However, Taylor seated Juror 138, an African-American, with a similar education and/or employment level. Although employment is a race neutral reason for striking a juror, the State demonstrated Taylor's explanation was mere pretext by pointing to a similarly situated African-American juror whom Taylor seated. See State v. Ford, 334 S.C. 59, 65, 512 S.E.2d 500, 504 (1999) (noting "it is legitimate to strike potential jurors because of their employment"). Considering the record as a whole, we see nothing clearly erroneous in the trial court's determination and defer to the trial court's finding of purposeful discrimination.

II. Rules 403 and 404(b), SCRE

Taylor contends the trial court erred in allowing the admission of Victim's testimony regarding the 1999 rape as evidence of a common scheme or plan because they are not sufficiently similar. Assuming the 1999 rape is evidence of a common scheme or plan, Taylor maintains its probative value was substantially outweighed by the danger of unfair prejudice. We disagree.

"The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion." State v. Pagan, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006). "An abuse of discretion occurs

when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." Id.

South Carolina Rule of Evidence 404(b) provides: "Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith." However, evidence of other crimes, wrongs or acts may be "admissible to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent." Rule 404(b), SCRE. Evidence of other crimes, wrongs, or acts is admissible to show a common scheme or plan when a "close degree of similarity [exists] between the crime charged and the prior bad act." State v. Gaines, 380 S.C. 23, 30, 667 S.E.2d 728, 731 (2008). Thus, the trial court must examine "the similarities and dissimilarities between the crime charged and the bad act evidence"; if the "similarities outweigh the dissimilarities, the bad act evidence is admissible" as evidence of a common scheme or plan. State v. Wallace, 384 S.C. 428, 433, 683 S.E.2d 275, 277-78 (2009). "A close degree of similarity establishes the required connection between the two acts and no further 'connection' must be shown for admissibility." Id. at 434, 683 S.E.2d at 278. In sexual abuse cases, the trial court should consider all relevant factors in determining the degree of similarity, including "(1) the age of the victims when the abuse occurred; (2) the relationship between the victims and the perpetrator; (3) the location where the abuse occurred; (4) the use of coercion or threats; and (5) the manner of the occurrence, for example, the type of sexual battery." Id. at 433-34, 683 S.E.2d at 278.

Here, the trial court weighed the similarities between the two crimes and determined they fell within the common scheme or plan exception under Rule 404(b), SCRE. In making this determination, the trial court relied on State v. Edwards for the proposition that "[t]he common scheme or plan exception is commonly applied in cases of sexual assault where conduct both before and after the acts charged is held admissible to show 'continued illicit intercourse between the same parties.'" 373 S.C. 230, 235, 644 S.E.2d 66, 69 (Ct. App. 2007) (citing State v. Mathis, 359 S.C. 450, 463, 597 S.E.2d 872, 879 (Ct. App. 2004)). In our view, the concept of continued illicit intercourse between the same parties in sexual abuse cases is another way of stating the common scheme or plan exception to Rule 404(b). See State v. Clasby, 385 S.C. 148, 159, 682 S.E.2d 892, 898 (2009) (concluding evidence

of the defendant's continued illicit sexual abuse "prior to the indicted offenses constitutes the archetypal 'common scheme or plan' evidence"); State v. Tutton, 354 S.C. 319, 328, 580 S.E.2d 186, 191 (Ct. App. 2003) ("Where there is a pattern of continuous misconduct, as commonly found in sex crimes, that pattern supplies the necessary connection to support the existence of a plan. Presumably, this is so because the same evidence that establishes the continuous nature of the assaults will generally suffice to prove the existence of the common scheme or plan as well."). Therefore, we proceed with the analysis used in Wallace.

Turning to the Wallace factors, the 1998 and 1999 rapes occurred nine months apart when Victim was 11 to 12 years old. Taylor was the Victim's pastor. While the physical locations where the rapes occurred are not identical, both rapes occurred in connection with church organized outings. After both rapes Taylor threatened Victim to prevent him from revealing the rapes. Finally, the type of sexual battery in 1998 is identical to the sexual battery in 1999. In sum, with the exception of the physical location of the rapes, all the Wallace factors are highly similar. The similarities between the 1998 rape and the 1999 rape outweigh the dissimilarities, and we conclude a very close degree of similarity exists between the rapes. Accordingly, Taylor's argument is without merit.

Even if evidence of "other crimes, wrongs, or acts" is admissible as evidence of a common scheme or plan, it must be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. Clasby, 385 S.C. at 155-56, 682 S.E.2d at 896; Rule 403, SCRE ("Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence."). We are cognizant of the prejudicial effect of admitting evidence of other crimes, wrongs, or acts based upon the degree of similarity with the charged crime. See Wallace, 384 S.C. at 436, 683 S.E.2d at 279 (noting "the mere presence of similarity only serves to enhance the potential for prejudice") (Pleicones, J. dissenting). However, here, both rapes were committed in an identical manner under almost identical circumstances on the same victim. Therefore, we conclude the trial court properly found the probative value of the 1999 rape substantially

outweighed the danger of unfair prejudice to Taylor. See State v. Mathis, 359 S.C. 450, 464, 597 S.E.2d 872, 879-80 (Ct. App. 2004) (finding the probative value of evidence of earlier assaults on the victim substantially outweighed the danger of unfair prejudice where all the earlier assaults were attempted in the same manner and under similar circumstances).

III. Venue

Taylor argues the trial court erred in denying his motion for a directed verdict because the State failed to prove the 1998 rape occurred in Williamsburg County. We disagree.

Generally, a criminal defendant "has a right to be tried in the county in which the offense is alleged to have been committed." State v. Brisbon, 323 S.C. 324, 327, 474 S.E.2d 433, 435 (1996). Thus, a defendant "is entitled to a directed verdict when the State fails to present evidence that the offense was committed in the county alleged in the indictment." State v. Williams, 321 S.C. 327, 333, 468 S.E.2d 626, 630 (1996). However, this is a low evidentiary threshold. Brisbon, 323 S.C. at 328, 474 S.E.2d at 436. The State is not required to affirmatively prove venue, it is sufficient if evidence exists from which venue can be inferred. Id. at 327, 474 S.E.2d at 435. In the absence of conflicting evidence, even slight evidence of venue is sufficient. Id.

Here, Victim testified the campsite was "just outside of Andrews" on Highway 521, about a "mile in the woods," "right next to the Black River." Victim's mother also testified she was told the campsite was on the "other side of Andrews." Victim explained he first reported the rape to the Georgetown County authorities who were uncertain whether the campsite was in Georgetown County or Williamsburg County. The Georgetown County authorities referred Victim to Sergeant Laura Rogers, a victims advocate for the Williamsburg County Sheriff's Office. Rogers reviewed the statement Victim gave to the Georgetown County authorities and took additional oral and written statements from Victim. Rogers explained Victim's statements contained landmarks which she used to personally locate the campsite in Williamsburg County. We find the State presented sufficient

evidence to establish the 1998 rape occurred in Williamsburg County. Thus, the trial court properly denied Taylor's motion for a directed verdict.

IV. Life Without Parole

Taylor contends the trial court erred in sentencing him to life without parole (LWOP). Taylor argues the 1999 rape is inextricably connected to the 1998 rape because it was admitted as evidence of a common scheme or plan. Therefore, Taylor maintains the 1998 rape and the 1999 rape should be considered one offense pursuant to section 17-25-50 of the South Carolina Code (2003). However, we believe this issue is not preserved for our review.

At trial, Taylor moved to quash the State's notice of its intent to seek a sentence of life without parole. Taylor argued his conviction for the 1998 rape did not support a sentence of life without parole because it occurred prior to his predicate most serious offense, the 1999 rape.² The trial court denied Taylor's motion. After trial, Taylor filed a motion to reconsider. At the hearing on his motion to reconsider, one of Taylor's contentions was the 1998 and 1999 rapes were so closely connected in time that they should be treated as one offense pursuant to section 17-25-50 of the South Carolina Code (2003). In response, the State submitted the 1998 and 1999 rapes were not committed as part of a continuous course of conduct or crime spree. The

² In 1982, the Legislature passed section 17-25-45 of the South Carolina Code (1982), adding a provision that stated "a conviction shall be considered a second conviction only if the date of the commission of the second crime occurred subsequent to the imposition of the sentence for the first offense." Bryant v. State, 384 S.C. 525, 530, 683 S.E.2d 280, 282-83 (2009). In 1995, the Legislature amended section 17-25-45 to abandon the requirement that a second offense occur after the imposition of a sentence for the prior offense. Id. at 530-31, 683 S.E.2d at 283. In 2006, the Legislature again amended section 17-25-45(F) to clarify that the sentence for the predicate most serious offense does not have to be served before a sentence of life without parole can be imposed for a subsequent offense. Id. at 531, 683 S.E.2d at 283. Here, Taylor makes his argument under the 1982 statute. Since the incident here occurred in 1998, the 1982 statute is not relevant, and the 1995 amended statute is applicable.

trial court inquired whether its ruling admitting evidence of the 1999 rape as evidence of a common scheme or plan required it to also find the 1998 and 1999 rapes were one continuous event pursuant to section 17-25-50. The State maintained the rapes were not so closely connected in time that they should be considered one offense. Taylor then reiterated his argument a LWOP sentence was improper in his case because the predicate most serious offense occurred after the 1998 rape. The trial court denied Taylor's motion to reconsider. In its order the trial court noted Taylor argued his LWOP sentence was improper because evidence of the 1999 rape was admitted as evidence of a common scheme or plan.³ The trial court found no authority existed supporting the proposition and denied the motion.

We find the issue of whether the crimes should have been considered one serious offense due to their close temporal proximity and inextricable connection is unpreserved because our review of the record reveals Taylor never raised it during trial. Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) (stating an issue must be "raised to and ruled upon by the trial judge to be preserved for appellate review") (emphasis added); State v. Carriker, 269 S.C. 553, 555, 238 S.E.2d 678, 678 (1977) (finding issue unpreserved because it was not raised by the appellant). Taylor appears to approach the issue at the post-trial motion hearing.⁴ Even so, this is insufficient to preserve the issue for our review because it was not raised at trial. See Dixon v. Dixon, 362 S.C. 388, 399, 608 S.E.2d 849, 854 (2005) (holding that an issue first raised in a post-trial motion is not preserved for appellate review); see also Wilder, 330 S.C. at 77, 497 S.E.2d at 734 (holding post-trial motions are not necessary to preserve issues that have already been ruled on; they are used to preserve those that have been raised to the trial

³ After a review of the record, it appears only the trial court raised the issue of whether a finding of a common scheme or plan under Lyle would require a finding that the 1998 and 1999 rapes were one continuous event for purposes of sentencing.

⁴ Taylor contends, in a persuasive argument, that the definition of "inextricably connected" and "continuous course of conduct," as applied to these facts, entitles him to lenity or other relief in the application of section 17-25-50. However, he did not raise this issue at trial; thus, we are bound by the laws of preservation.

court but not yet ruled on by it). The balance of the argument on the issue at the post-trial motion hearing was raised by the trial court, which is also insufficient to preserve the issue for our review. Duncan v. Hampton Cnty School Dist. No. 2, 335 S.C. 535, 545, 517 S.E.2d 449, 454 (Ct. App. 1999) (finding issue unpreserved where it was raised sua sponte by the trial court and not by the respondent). Furthermore, on appeal, Taylor argues "[t]he [trial court] improperly sentenced [Taylor] to life without parole because the substantive facts of the predicate offense were admitted as common scheme or plan evidence." However, at trial and during argument on his motion to reconsider, Taylor repeatedly maintained the trial court erred in sentencing him to life without parole because the predicate most serious offense, the 1999 rape, occurred after the 1998 rape. Taylor cannot argue one ground for error at trial and a different ground for error on appeal. See State v. Haselden, 353 S.C. 190, 196, 577 S.E.2d 445, 448 (2003). Accordingly, this issue is not preserved for our review.

CONCLUSION

For the foregoing reasons, Taylor's convictions and sentence of life without parole are

AFFIRMED.

WILLIAMS and GEATHERS, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State,

Respondent,

v.

Robert Troy Taylor,

Appellant.

Appeal from Williamsburg County
Judge George C. James, Circuit Court Judge

Opinion No. 4920
Heard March 10, 2011 – Filed December 21, 2011
Withdrawn, Substituted and Refiled June 6, 2012

AFFIRMED

Jeremy Adam Thompson, of Columbia, for
Appellant.

Attorney General Alan Wilson, Chief Deputy
Attorney General John W. McIntosh, Assistant
Deputy Attorney General Salley W. Elliott, and
Assistant Attorney General William M. Blich, Jr., all
of Columbia; and Solicitor Ernest Finney, III, of
Sumter, for Respondent.

MY, J.: Robert Troy Taylor appeals his convictions and sentence without parole for criminal sexual conduct with a minor in Murrells Inlet, South Carolina. Taylor argues the trial court erred in (1) granting the State's Batson motion, (2) admitting evidence of Taylor's prior criminal sexual conduct with a minor, (3) denying his motion for a new trial, (4) granting the verdict, and (5) sentencing him to life without parole. We

FACTS

Taylor was the pastor of the church Victim attended in Murrells Inlet, South Carolina. In November 1998, when Victim was 11, Taylor organized a camping trip with Victim and a group of six or seven boys from the church. Taylor took the boys to an area "just outside [the city of] Andrews" on Highway 521 and the group hiked about a mile into the woods to a campsite right next to the Black River." Taylor and the boys set up a tent and a large tarp, made a fire, and cooked food. At approximately 11 p.m., the boys retired to their sleeping bags under the tarp. Later that night, Taylor woke Victim, placed his hand over Victim's mouth, and carried him to the tent. Once inside the tent, Taylor removed Victim's clothes and forced Victim to touch his penis and anus. Taylor also touched Victim's penis and anus. Next, Taylor raped Victim. After raping Victim, Taylor instructed Victim not to reveal the rape to anyone and returned Victim to his sleeping bag. Taylor slept next to Victim and held him throughout the course of the night.

In August 1999, Taylor and a few other adults from the church organized a trip to the beach. After leaving the beach, the group returned to the church to use the showers. Once all the showers were occupied, Taylor asked Victim and another boy if they would like to use the showers at his house. Victim and the other boy accompanied Taylor to his home near the church. While Victim was showering, Taylor entered the bathroom, removed his clothes, and entered the shower. Taylor forced Victim to touch his penis and Taylor touched Victim's penis and anus. Next, Taylor raped Victim. After raping Victim, Taylor instructed Victim not to divulge the rape to anyone. Taylor drove Victim and the other boy back to the church.

Approximately five years after the 1999 rape, Victim, then 17, told his parents about the two rapes. Taylor was indicted for second degree criminal sexual conduct with a minor in Georgetown County for the 1999 rape. Taylor pled guilty and was sentenced to eight years' imprisonment suspended upon the service of five years and three years' probation. In May 2006, Taylor was indicted for second degree criminal sexual conduct with a minor and kidnapping for the 1998 rape. The State served Taylor with notice of its intent to seek a sentence of life without parole pursuant to section 17-25-45 of the South Carolina Code (2003). Taylor was convicted on both counts and the trial court sentenced him to life without parole. This appeal followed.

STANDARD OF REVIEW

"In criminal cases, the appellate court sits to review errors of law only." State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). Thus, an appellate court is bound by the trial court's factual findings unless they are clearly erroneous. Id.

LAW/ANALYSIS

I. Batson

Taylor argues the trial court's finding that his strike of Juror 146 was racially motivated is clearly erroneous. We disagree.

"The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution prohibits the State from striking a venire[]person on the basis of race." State v. Hicks, 330 S.C. 207, 211, 499 S.E.2d 209, 211 (1998) (citing Batson v. Kentucky, 476 U.S. 79 (1986)). The trial court must hold a Batson hearing when members of a cognizable racial group are struck and the opposing party requests a hearing. State v. Haigler, 334 S.C. 623, 629, 515 S.E.2d 88, 90 (1999). First, the proponent of the strike must present a race or gender neutral explanation for the challenged strike. Id. In response the opponent of the strike must show the race or gender neutral explanation given by the proponent was mere pretext. Id. at 629, 515 S.E.2d at 91. Pretext is generally established by showing similarly situated members of another race or gender who were seated on the jury. Id.

"Whether a Batson violation has occurred must be determined by examining the totality of the facts and circumstances in the record." State v. Edwards, 384 S.C. 504, 509, 682 S.E.2d 820, 822 (2009). The trial court's finding of purposeful discrimination rests on its evaluation of demeanor and credibility. Id. at 509, 682 S.E.2d at 823. "Often the demeanor of the challenged attorney will be the best and only evidence of discrimination, and an 'evaluation of the [attorney's] mind lies peculiarly within a trial [court's] province.'" Id. (quoting Hernandez v. New York, 500 U.S. 352, 365 (1991)). This court will give the trial court's finding great deference on appeal and review the trial court's ruling with a clearly erroneous standard. Edwards, 384 S.C. at 509, 682 S.E.2d at 822.

Here, the State moved to quash the jury after Taylor used ten strikes to strike white jurors. In regard to Juror 146, Taylor noted Juror 146 was an administrative assistant and offered the following explanation:

I have found over the years that the more education jurors have the less likely they are to adopt argument—they usually come with their own idea or agenda. Over the years, I [have] learned to shy away from jurors with higher education. And, in addition to that, I also know her husband personally and we just do [not] get along.¹

In response, the State pointed to Juror 138, an accountant, as a similarly situated African-American juror with equal or more education than Juror 146. The trial court inquired regarding Taylor's reasoning for concluding Juror 146 had a high level of education. Taylor responded: "Well, she [is] an [a]dministrative [a]ssistant. Inasmuch as she would be in management that she would have got there by promotion or her qualification[s]. Certainly she

¹ Taylor has not argued on appeal that defense counsel's poor personal relationship with Juror 146's husband was a proper race neutral explanation for the strike. Accordingly, we are precluded from addressing the issue. See State v. Carriker, 269 S.C. 553, 555, 238 S.E.2d 678, 678 (1977) (finding issue unpreserved because it was not raised by the appellant).

would have met the qualification to be in management. But she is in management."

Before ruling on the State's Batson motion, the trial court allowed Taylor to revisit his explanation for striking Juror 146. Taylor explained that in striking Juror 146 based upon her education level, in essence, he was striking her based upon her position in management. According to Taylor, jurors with management level employment "come with an agenda" and are "constantly manifesting their discretion as it relates to how you handle people." Ultimately, the trial court found Taylor offered a race neutral explanation for the other nine strikes he used. However, the trial court found Taylor's strike of Juror 146 violated Batson because he accepted Juror 138 with more formal education and a higher level employment position. A jury was re-struck and Juror 146 was seated on the jury.

Based on our standard of review, we are unable to find anything clearly erroneous in the trial court's determination Taylor failed to offer a race neutral explanation for striking Juror 146. Taylor explained he struck Juror 146 based on her education and/or employment level. However, Taylor seated Juror 138, an African-American, with a similar education and/or employment level. Although employment is a race neutral reason for striking a juror, the State demonstrated Taylor's explanation was mere pretext by pointing to a similarly situated African-American juror whom Taylor seated. See State v. Ford, 334 S.C. 59, 65, 512 S.E.2d 500, 504 (1999) (noting "it is legitimate to strike potential jurors because of their employment"). Considering the record as a whole, we see nothing clearly erroneous in the trial court's determination and defer to the trial court's finding of purposeful discrimination.

II. Rules 403 and 404(b), SCRE

Taylor contends the trial court erred in allowing the admission of Victim's testimony regarding the 1999 rape as evidence of a common scheme or plan because they are not sufficiently similar. Assuming the 1999 rape is evidence of a common scheme or plan, Taylor maintains its probative value was substantially outweighed by the danger of unfair prejudice. We disagree.

"The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion." State v. Pagan, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." Id.

South Carolina Rule of Evidence 404(b) provides: "Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith." However, evidence of other crimes, wrongs or acts may be "admissible to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent." Rule 404(b), SCRE. Evidence of other crimes, wrongs, or acts is admissible to show a common scheme or plan when a "close degree of similarity [exists] between the crime charged and the prior bad act." State v. Gaines, 380 S.C. 23, 30, 667 S.E.2d 728, 731 (2008). Thus, the trial court must examine "the similarities and dissimilarities between the crime charged and the bad act evidence"; if the "similarities outweigh the dissimilarities, the bad act evidence is admissible" as evidence of a common scheme or plan. State v. Wallace, 384 S.C. 428, 433, 683 S.E.2d 275, 277-78 (2009). "A close degree of similarity establishes the required connection between the two acts and no further 'connection' must be shown for admissibility." Id. at 434, 683 S.E.2d at 278. In sexual abuse cases, the trial court should consider all relevant factors in determining the degree of similarity, including "(1) the age of the victims when the abuse occurred; (2) the relationship between the victims and the perpetrator; (3) the location where the abuse occurred; (4) the use of coercion or threats; and (5) the manner of the occurrence, for example, the type of sexual battery." Id. at 433-34, 683 S.E.2d at 278.

Here, the trial court weighed the similarities between the two crimes and determined they fell within the common scheme or plan exception under Rule 404(b), SCRE. In making this determination, the trial court relied on State v. Edwards for the proposition that "[t]he common scheme or plan exception is commonly applied in cases of sexual assault where conduct both before and after the acts charged is held admissible to show 'continued illicit intercourse between the same parties.'" 373 S.C. 230, 235, 644 S.E.2d 66, 69 (Ct. App. 2007) (citing State v. Mathis, 359 S.C. 450, 463, 597 S.E.2d 872, 879 (Ct. App. 2004)). In our view, the concept of continued illicit

intercourse between the same parties in sexual abuse cases is another way of stating the common scheme or plan exception to Rule 404(b). See State v. Clasby, 385 S.C. 148, 159, 682 S.E.2d 892, 898 (2009) (concluding evidence of the defendant's continued illicit sexual abuse "prior to the indicted offenses constitutes the archetypal 'common scheme or plan' evidence"); State v. Tutton, 354 S.C. 319, 328, 580 S.E.2d 186, 191 (Ct. App. 2003) ("Where there is a pattern of continuous misconduct, as commonly found in sex crimes, that pattern supplies the necessary connection to support the existence of a plan. Presumably, this is so because the same evidence that establishes the continuous nature of the assaults will generally suffice to prove the existence of the common scheme or plan as well."). Therefore, we proceed with the analysis used in Wallace.

Turning to the Wallace factors, the 1998 and 1999 rapes occurred nine months apart when Victim was 11 to 12 years old. Taylor was the Victim's pastor. While the physical locations where the rapes occurred are not identical, both rapes occurred in connection with church organized outings. After both rapes Taylor threatened Victim to prevent him from revealing the rapes. Finally, the type of sexual battery in 1998 is identical to the sexual battery in 1999. In sum, with the exception of the physical location of the rapes, all the Wallace factors are highly similar. The similarities between the 1998 rape and the 1999 rape outweigh the dissimilarities, and we conclude a very close degree of similarity exists between the rapes. Accordingly, Taylor's argument is without merit.

Even if evidence of "other crimes, wrongs, or acts" is admissible as evidence of a common scheme or plan, it must be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. Clasby, 385 S.C. at 155-56, 682 S.E.2d at 896; Rule 403, SCRE ("Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence."). We are cognizant of the prejudicial effect of admitting evidence of other crimes, wrongs, or acts based upon the degree of similarity with the charged crime. See Wallace, 384 S.C. at 436, 683 S.E.2d at 279 (noting "the mere presence of similarity only serves to enhance the potential for prejudice") (Pleicones, J. dissenting). However,

here, both rapes were committed in an identical manner under almost identical circumstances on the same victim. Therefore, we conclude the trial court properly found the probative value of the 1999 rape substantially outweighed the danger of unfair prejudice to Taylor. See State v. Mathis, 359 S.C. 450, 464, 597 S.E.2d 872, 879-80 (Ct. App. 2004) (finding the probative value of evidence of earlier assaults on the victim substantially outweighed the danger of unfair prejudice where all the earlier assaults were attempted in the same manner and under similar circumstances).

III. Venue

Taylor argues the trial court erred in denying his motion for a directed verdict because the State failed to prove the 1998 rape occurred in Williamsburg County. We disagree.

Generally, a criminal defendant "has a right to be tried in the county in which the offense is alleged to have been committed." State v. Brisbon, 323 S.C. 324, 327, 474 S.E.2d 433, 435 (1996). Thus, a defendant "is entitled to a directed verdict when the State fails to present evidence that the offense was committed in the county alleged in the indictment." State v. Williams, 321 S.C. 327, 333, 468 S.E.2d 626, 630 (1996). However, this is a low evidentiary threshold. Brisbon, 323 S.C. at 328, 474 S.E.2d at 436. The State is not required to affirmatively prove venue, it is sufficient if evidence exists from which venue can be inferred. Id. at 327, 474 S.E.2d at 435. In the absence of conflicting evidence, even slight evidence of venue is sufficient. Id.

Here, Victim testified the campsite was "just outside of Andrews" on Highway 521, about a "mile in the woods," "right next to the Black River." Victim's mother also testified she was told the campsite was on the "other side of Andrews." Victim explained he first reported the rape to the Georgetown County authorities who were uncertain whether the campsite was in Georgetown County or Williamsburg County. The Georgetown County authorities referred Victim to Sergeant Laura Rogers, a victims advocate for the Williamsburg County Sheriff's Office. Rogers reviewed the statement Victim gave to the Georgetown County authorities and took additional oral and written statements from Victim. Rogers explained

Victim's statements contained landmarks which she used to personally locate the campsite in Williamsburg County. We find the State presented sufficient evidence to establish the 1998 rape occurred in Williamsburg County. Thus, the trial court properly denied Taylor's motion for a directed verdict.

IV. Life Without Parole

Taylor contends the trial court erred in sentencing him to life without parole (LWOP). Taylor argues the 1999 rape is inextricably connected to the 1998 rape because it was admitted as evidence of a common scheme or plan. Therefore, Taylor maintains the 1998 rape and the 1999 rape should be considered one offense pursuant to section 17-25-50 of the South Carolina Code (2003). However, we believe this issue is not preserved for our review.

At trial, Taylor moved to quash the State's notice of its intent to seek a sentence of life without parole. Taylor argued his conviction for the 1998 rape did not support a sentence of life without parole because it occurred prior to his predicate most serious offense, the 1999 rape.² The trial court denied Taylor's motion. After trial, Taylor filed a motion to reconsider. At the hearing on his motion to reconsider, one of Taylor's contentions was the 1998 and 1999 rapes were so closely connected in time that they should be treated as one offense pursuant to section 17-25-50 of the South Carolina

² In 1982, the Legislature passed section 17-25-45 of the South Carolina Code (1982), adding a provision that stated "a conviction shall be considered a second conviction only if the date of the commission of the second crime occurred subsequent to the imposition of the sentence for the first offense." Bryant v. State, 384 S.C. 525, 530, 683 S.E.2d 280, 282-83 (2009). In 1995, the Legislature amended section 17-25-45 to abandon the requirement that a second offense occur after the imposition of a sentence for the prior offense. Id. at 530-31, 683 S.E.2d at 283. In 2006, the Legislature again amended section 17-25-45(F) to clarify that the sentence for the predicate most serious offense does not have to be served before a sentence of life without parole can be imposed for a subsequent offense. Id. at 531, 683 S.E.2d at 283. Here, Taylor makes his argument under the 1982 statute. Since the incident here occurred in 1998, the 1982 statute is not relevant, and the 1995 amended statute is applicable.

Code (2003). In response, the State submitted the 1998 and 1999 rapes were not committed as part of a continuous course of conduct or crime spree. The trial court inquired whether its ruling admitting evidence of the 1999 rape as evidence of a common scheme or plan required it to also find the 1998 and 1999 rapes were one continuous event pursuant to section 17-25-50. The State maintained the rapes were not so closely connected in time that they should be considered one offense. Taylor then reiterated his argument a LWOP sentence was improper in his case because the predicate most serious offense occurred after the 1998 rape. The trial court denied Taylor's motion to reconsider. In its order the trial court noted Taylor argued his LWOP sentence was improper because evidence of the 1999 rape was admitted as evidence of a common scheme or plan.³ The trial court found no authority existed supporting the proposition and denied the motion.

We find the issue of whether the crimes should have been considered one serious offense due to their close temporal proximity and inextricable connection is unpreserved because our review of the record reveals Taylor never raised it during trial. Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) (stating an issue must be "raised to and ruled upon by the trial judge to be preserved for appellate review") (emphasis added); State v. Carriker, 269 S.C. 553, 555, 238 S.E.2d 678, 678 (1977) (finding issue unpreserved because it was not raised by the appellant). Taylor appears to approach the issue at the post-trial motion hearing.⁴ Even so, this is insufficient to preserve the issue for our review because it was not raised at trial. See Dixon v. Dixon, 362 S.C. 388, 399, 608 S.E.2d 849, 854 (2005) (holding that an issue first raised in a post-trial motion is not preserved for appellate review); see also Wilder, 330 S.C. at 77, 497 S.E.2d at 734 (holding post-trial motions are not necessary to preserve issues that have already been

³ After a review of the record, it appears only the trial court raised the issue of whether a finding of a common scheme or plan under Lyle would require a finding that the 1998 and 1999 rapes were one continuous event for purposes of sentencing.

⁴ Taylor contends the definition of "inextricably connected" and "continuous course of conduct," as applied to these facts, entitles him to lenity or other relief in the application of section 17-25-50. He did not raise this issue at trial; thus, we are bound by the laws of preservation.

ruled on; they are used to preserve those that have been raised to the trial court but not yet ruled on by it). The balance of the argument on the issue at the post-trial motion hearing was raised by the trial court, which is also insufficient to preserve the issue for our review. Duncan v. Hampton Cnty School Dist. No. 2, 335 S.C. 535, 545, 517 S.E.2d 449, 454 (Ct. App. 1999) (finding issue unpreserved where it was raised sua sponte by the trial court and not by the respondent). Furthermore, on appeal, Taylor argues "[t]he [trial court] improperly sentenced [Taylor] to life without parole because the substantive facts of the predicate offense were admitted as common scheme or plan evidence." However, at trial and during argument on his motion to reconsider, Taylor repeatedly maintained the trial court erred in sentencing him to life without parole because the predicate most serious offense, the 1999 rape, occurred after the 1998 rape. Taylor cannot argue one ground for error at trial and a different ground for error on appeal. See State v. Haselden, 353 S.C. 190, 196, 577 S.E.2d 445, 448 (2003). Accordingly, this issue is not preserved for our review.

CONCLUSION

For the foregoing reasons, Taylor's convictions and sentence of life without parole are

AFFIRMED.

WILLIAMS and GEATHERS, JJ., concur.

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM WILLIAMSBURG COUNTY
Court of General Sessions

George C. James, Circuit Court Judge

Case No. 2006-GS-45-176

STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

ROBERT TROY TAYLOR,

APPELLANT.

PETITION FOR REHEARING

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NOW COMES the Appellant in the above-captioned action, acting by and through undersigned counsel, respectfully petitioning this Court to rehear his appeal and reconsider its decision in State v. Taylor, Op. No. 4920 (S.C. Ct. App. filed December 21, 2011) (Davis Adv. Sh. No. 46 at 107).¹ The Appellant would assert that the following critical matters of fact and law were overlooked or misapprehended by the Court in its decision:

The Appellant raised four grounds on appeal: (1) that the circuit judge improperly granted the State's motion pursuant to Batson v. Kentucky, 476 U.S. 79 (1986); (2) that the circuit judge improperly admitted bad act testimony in violation of Rules 403 and 404(b), SCRE; (3) that the circuit judge improperly denied the Appellant's motion for a directed verdict based on the State's failure to prove venue; and (4) that the circuit judge improperly imposed an LWOP sentence in this case. The Appellant's arguments on rehearing for each of these issues will be addressed in turn.

A. Batson Violation

As an initial matter, the Appellant would note that this Court made an error of law with regard to its reasoning on this issue. A Batson hearing has three segments:

Under our Batson jurisprudence, once the opponent of a peremptory challenge has made out a prima facie case of racial discrimination (step one), the burden of production shifts to the proponent of the strike to come forward with a race-neutral explanation (step two). If a race neutral explanation is tendered, the trial court must then decide (step three) whether the opponent of the strike has proved purposeful racial discrimination.

Purkett v. Elam, 514 U.S. 765, 767 (1995); see also State v. Adams, 322 S.C. 114, 124, 470 S.E.2d 366, 372 (1996) ("We take this opportunity to adopt the standard delineated in Purkett"). In rejecting the Appellant's arguments on this issue, the Court found that "we are unable to find anything clearly erroneous in the trial court's determination Taylor *failed to offer a race neutral*

¹ All citations to this opinion are to the page number contained in the Advance Sheets.

explanation for striking Juror 146.” *Taylor, supra*, at 111 (emphasis added). The trial court, however, never made such a determination. To the contrary, the trial court found that the race-neutral reason proffered by the Appellant was pretextual, which was a ruling on the third step of the Batson procedure. The issue on appeal was, similarly, whether or not the trial court erred in its application of the third step of the Batson procedure. Since this portion of the Court’s opinion is a ruling on an issue that was not appealed—whether or not the trial court misapplied Batson’s second step—the Court misapprehended the Appellant’s argument on this issue.² Consequently, the Appellant would respectfully request that this Court grant rehearing on this issue due to the incorrect ruling of law.

Turning to the merits of the claim, the Appellant contends that the Court misapprehended the facts as presented by the Batson hearing when it concluded that Juror 138 was similarly situated to Juror 146 and that there was “nothing clearly erroneous in the trial court’s determination” that “Juror 138 [had] more formal education and a higher level employment position.” *Taylor, supra*, at 111. As explained by trial counsel below, Juror 146 was struck because of her position in management. *See* ROA p. 16, line 24-p. 17, line 3. Defense counsel knew, however, that because of Juror 138’s race that she could not be in management at her place of employment. *See* ROA p. 17, lines 3-7. Therefore, Juror 138 was not similarly situated since her position in management was not the same as Juror 146’s. Consequently, this Court’s conclusion that the trial court did not clearly err in granting the State’s Batson motion is itself clearly erroneous. The Appellant would respectfully request that this Court rehear this matter.³

² The Appellant does not contend that the entire opinion is controlled by this portion of the Court’s opinion, as the Court later notes that “employment is a race neutral reason for striking a juror.” *Taylor, supra*, at 111. The very nature of these conflicting findings warrants rehearing.

³ As this Court noted, there is a strong concern for “the potential for prejudice with Juror 146 seated on the re-struck jury.” *Taylor, supra*, at 111. Based on the Supreme Court’s precedent, the proper remedy for improperly granting the State’s Batson motion and seating Juror 146 is a new trial. *See State v. Edwards*, 384 S.C. 504, 682 S.E.2d 820 (2009).

B. Other Bad Acts

This Court rejected the Appellant's arguments pursuant to Rules 403 and 404(b), SCRE, by finding that "both rapes were committed in an identical manner under almost identical circumstances on the same victim." Taylor, supra, at 113. The Appellant contends that this Court's conclusions on these arguments are controlled by an error of law: the reliance on State v. Wallace, 384 S.C. 428, 683 S.E.2d 275 (2009). Furthermore, the Court failed to recognize any of the dissimilarities between the two criminal acts. This Court's findings are telling on this point:

Turning to the Wallace factors, the 1998 and 1999 rapes occurred nine months apart when Victim was 11 to 12 years old. Taylor was the Victim's pastor. While the physical locations where the rapes occurred are not identical, both rapes occurred in connection with church organized outings. After both rapes Taylor threatened Victim to prevent him from revealing the rapes. Finally, the type of sexual battery in 1998 is identical to the sexual batter in 1999. In sum, with the exception of the physical location of the rapes, all the Wallace factors are highly similar. The similarities between the 1998 rape and the 1999 rape outweigh the dissimilarities, and we conclude a very close degree of similarity exists between the rapes.

Taylor, supra, at 113.

The Court's reliance on the Wallace factors is misplaced because Wallace dealt with a factual scenario where there were multiple victims. See 348 S.C. at 431-432, 683 S.E.2d at 276-277. Wallace envisioned that the listed factors—used by the Court to deny relief on this issue—would be used "in this type of case"—i.e., multiple victim cases. 348 S.C. at 433, 683 S.E.2d at 278. This conclusion is only furthered strengthened by the fact that the Supreme Court cited to two multiple victims cases—State v. Hallman, 298 S.C. 172, 379 S.E.2d 115 (1989) and State v. McClellan, 283 S.C. 389, 323 S.E.2d 772 (1984)—following the explanation of factors in Wallace. 348 S.C. at 434, 683 S.E.2d at 278.

Instead of using all of the Wallace factors for single victim cases, the Supreme Court made clear in State v. Clasby, 385 S.C. 148, 682 S.E.2d 892 (2009), a single victim case, that the truly relevant Wallace factors in single victim cases are “the location where the abuse occurred, the use of coercion or threats, and the manner of the occurrence, for example, the type of sexual battery.” 385 S.C. at 157, 682 S.E.2d at 896. Consequently, in single victim cases, such as this one, the Wallace factors used to analyze the claim should be limited to primarily those factors cited in Clasby.

Since this case is a single victim case, this Court erred by focusing its attention on the factors cited by Wallace but not by Clasby: the relationship between the victim and the Appellant and the age of the victim. These factors are irrelevant because the factors will remain relatively constant in every single victim case. To use these factors for support, as the Court does, would be akin to using the fact that the Appellant had the same name in 1998 as he did in 1999 to find a “similarity” between the crimes. The Appellant contends that proper application of Clasby should result in a finding that the 1999 incident should have been excluded by the trial court.

The Appellant does not dispute that the type of sexual battery involved or the use of threats did not change between the two incidents. However, the circumstances of the two incidents are completely different. As this Court notes, the location of each incident was different. See Taylor, supra, at 113. The Appellant was a part of the 1998 camping trip; he was not a part of the 1999 trip to the beach.⁴ The Appellant assaulted the victim in the middle of the

⁴ The Court found that “both rapes occurred in connection with church organized outings.” This is incorrect as a matter of fact. The victim testified that the 1998 sexual assault occurred during the church-sponsored camping trip. He also testified, however, that the Appellant did not take part in the 1999 trip to the beach and the assault occurred only after the Appellant, who was at the church when they came back from the trip, offered to take the victim and his friend back to his home. See ROA p. 170, line 17-p. 171, line 3; p. 172, lines 20-23. Therefore, the 1999 incident did not occur during a church-sponsored activity as the 1998 incident did.

night in 1998 and in the middle of the day in 1999. The Appellant fell asleep holding the victim following the incident in 1998 whereas he took the victim straight back to the church in 1999. There is virtually nothing similar between the two assaults other than the physical act itself. Given all of the dissimilarities between the two acts and the misuse of Wallace's factors by this Court, the Appellant respectfully contends that this Court should grant rehearing with regard to his arguments as to the application of Rules 403 and 404(b), SCRE, to this case.

C. Venue

In denying relief on this issue, this Court found that "the State presented sufficient evidence to establish the 1998 rape occurred in Williamsburg County." Taylor, *supra*, at 114-115. This Court's reasoning for doing so appears to be based on Sergeant Laura Rogers' testimony that she "explained Victim's statements contained landmarks which she used to personally locate the campsite in Williamsburg County." *Id.* at 114. The Appellant contends that this Court misapprehended the actual testimony given by Sergeant Rogers at the trial and overstated her certainty that she had found the actual campsite.

The Appellant contends that this issue can be readily resolved by looking at a map. As this Court noted, the victim testified that the campsite was "just outside of Andrews." Taylor, *supra*, at 114. Andrews is located right on the border of Williamsburg County and Georgetown County.⁵ Therefore, any campsite "just outside" of Andrews must necessarily be barely in either Williamsburg County or Georgetown County. Nevertheless, the campsite that Sergeant Rogers located by following the victim's directions was found "very deep" in Williamsburg County. ROA p. 247, line 17-p. 248, line 9. It is simply impossible for Sergeant Rogers to have followed the victim's directions and come to that location. Therefore, Sergeant Rogers could not have

⁵ South Carolina Highway 41, which is located to the west of Andrews and runs in a north-south direction, is called "County Line Road."

“personally locate[d]” the campsite where the assault occurred because she did not locate the campsite. Id. at 114. Her testimony makes it clear that she located the wrong campsite. Given that Sergeant Rogers located an incorrect campsite that was only “familiar to what [the victim] had explained,” there is no evidence that the assault occurred in Williamsburg County. ROA p. 254, line 2. Therefore, the Appellant respectfully asserts that the Court’s finding that the State presented evidence that the assault occurred in Williamsburg County is erroneous because the State’s witnesses’ testimony about the location of the incident is directly contradicted by looking at a map of the area where the victim alleged the assault occurred. Accordingly, the Appellant respectfully requests that this Court grant rehearing on this issue.

D. LWOP Sentence

The Court, while noting that the Appellant had made a “persuasive argument” with regard to the validity of the LWOP sentences imposed in this case, found that this issue was not preserved for appeal because the claim “was not raised at trial.” Taylor, supra, at 116 (footnote 4). Instead, the Court finds that since the issue was brought up in a hearing on a motion to reconsider sentence, it is not preserved for appeal. The Appellant does not dispute the Court’s recitation of the circumstances that took place prior to the trial court ruling on the validity of the LWOP sentences. However, the Appellant contends that the claim is preserved for appeal. The trial court explicitly permitted the Appellant to expand his arguments regarding the LWOP sentences in a motion for reconsideration of sentence. See ROA p. 325, lines 16-18; p. 335, lines 6-11. Where the trial court essentially withholds final judgment on the applicability of a sentencing statute pending the filing of a post-trial motion, the burden should not be on defense counsel to make his objections at sentencing in order to preserve an issue for appeal. See Elam v. South Carolina Department of Transportation, 361 S.C. 9, 25, 602 S.E.2d 772, 780-781 (2004)

(holding that appellate courts should “strive to avoid an interpretation of procedural rules which routinely would place a party between the proverbial rock and a hard place”). Instead, preservation rules should permit the party to make their claims in the manner authorized by the trial court.

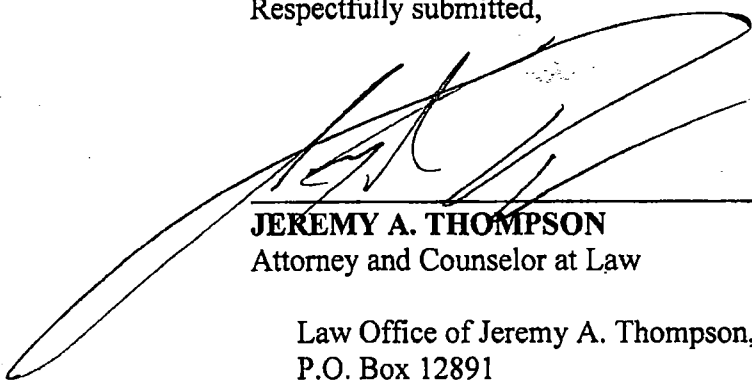
This Court also found that the claim presented on appeal was unpreserved for appellate review because “[t]he balance of the argument on the issue at the post-trial motion hearing was raised by the trial court ... Duncan v. Hampton Cnty School Dist. No. 2, 335 S.C. 535, 545, 517 S.E.2d 449, 454 (Ct. App. 1999) (finding issue unpreserved where it was raised sua sponte by the trial court and not by the respondent.” Taylor, supra, at 117. However, Duncan does not stand for the proposition this Court states it stands for. In Duncan, the issue presented on appeal was raised sua sponte by the trial court but “the [appellant] never took a position on” the issue. 335 S.C. at 545, 517 S.E.2d at 454 (footnote 6). Therefore, Duncan’s holding is that an issue that was first raised sua sponte by a trial court cannot be appealed if the party never takes a position on the issue. Duncan did not hold that all claims raised sua sponte are unpreserved for appeal, which is the proposition this Court appears to cite it for. Under the proper understanding of Duncan, the Appellant clearly preserved this claim for appeal because he adopted the position that the LWOP sentence was invalid for the reasons claimed on appeal. The trial court certainly understood that this was the Appellant’s position. See ROA pp. 367-368 (“The defendant urges this result on the basis that the Williamsburg and Georgetown crimes involved the same victim and on the basis that the Georgetown County incident was admitted into evidence ... as part of a common scheme or plan”). Therefore, the Appellant would request that this Court rehear this claim because the Court has extended Duncan beyond the original scope of the opinion and because the Appellant has met his burden to preserve the claim under Duncan.

“Issue preservation rules are designed to give the trial court a fair opportunity to rule on the issues, and thus provide us with a platform for meaningful appellate review.” Queen’s Grant II Horizontal Property Regime v. Greenwood Development Corp., 368 S.C. 342, 372-373, 628 S.E.2d 902, 919 (Ct. App. 2006). The Appellant contends that this issue is properly preserved for appellate review because “the ultimate goal behind preservation of error rules is to insure that an issue raised on appeal has first been addressed to and ruled on by the trial court.” State v. Nelson, 331 S.C. 1, 6, 501 S.E.2d 716, 718 (1998) (footnote 6). No one disputes that the issue addressed on appeal was directly ruled upon by the trial court. Given that the trial court directly ruled upon the claim presented on appeal, the Appellant contends that it would be unjust to find that the claim is unpreserved. Accordingly, the Appellant would respectfully request that this Court rehear this issue.

CONCLUSION

WHEREFORE, having set forth his grounds, the Appellant respectfully petitions this Court to rehear its opinion issued in this matter. See State v. Taylor, Op. No. 4920 (S.C. Ct. App. filed December 21, 2011) (Davis Adv. Sh. No. 46 at 107).

Respectfully submitted,



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ATTORNEY FOR APPELLANT.

This 4th day of January, 2012.

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM WILLIAMSBURG COUNTY
Court of General Sessions

George C. James, Presiding Judge

Case No. 2006-GS-45-176

STATE OF SOUTH CAROLINA,

RESPONDENT,

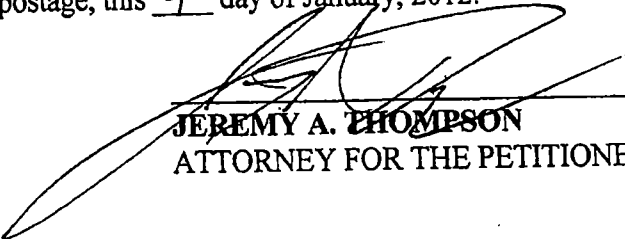
v.

ROBERT TROY TAYLOR,

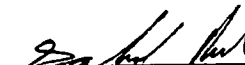
APPELLANT.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of the Appellant's Petition for Rehearing in the above-entitled case has been served upon opposing counsel, William M. Blich, Jr., Assistant Attorney General, Office of the Attorney General, P.O. Box 11549, Columbia, SC 29211, by depositing in the U.S. mail with proper postage, this 4th day of January, 2012.


JEREMY A. THOMPSON
ATTORNEY FOR THE PETITIONER

SWORN TO BEFORE me this 4 day
of January, 2012.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: 2/16



STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Williamsburg County
Hon. George C. James, Circuit Court Judge

The State,

Respondent,

v.

Robert Troy Taylor,

Appellant.

PETITION FOR REHEARING EN BANC

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This Court correctly affirmed the trial court's finding Appellant failed to offer a race neutral explanation for striking Juror 146. The Court properly found Appellant's strike violated the tenets

of Batson. The Court, however, added the following statement: "We are concerned with the potential for prejudice with Juror 146 seated on the re-struck jury." This should be removed in light of precedent allowing the improperly struck juror to be returned to the jury pool and eligible for sitting on a re-struck jury. See Batson, 476 U.S. at 100 n. 24, 106 S.Ct. at 1725 n. 24 (establishing the option for the court to allow "for the trial court to discharge the venire and select a new jury from a panel not previously associated with the case, or to disallow the discriminatory challenges and resume selection with the improperly challenged jurors reinstated on the venire"); State v. Lewis, 363 S.C. 37, 46, 609 S.E.2d 515, 520 (2005) (finding "[O]nce a juror has been unconstitutionally stricken, the jury selection process relative to that juror is tainted. If the trial court chooses to reseal the improperly stricken juror, the striking party may not use a peremptory strike to remove that juror from the panel a second time.") (citing Coleman v. Hogan, 254 Va. 64, 486 S.E.2d 548 (1997) (finding the remedy is within the discretion of the trial court including reseating the struck juror). Accordingly, the State asks this Court to grant the petition for rehearing and remove the above quoted language from the opinion in light of the fact the trial court exercised one of the options established under Batson and Lewis.

LWOP

The State submits this Court properly affirmed the imposition of a sentence of life without parole and properly applied section 17-25-50 in this case. The State, however, believes this Court incorrectly added footnote 4 which reads:

Taylor contends, in a persuasive argument, that the definition of "inextricably connected" and "continuous course of conduct," as applied to these facts, entitles him to lenity or other relief in the application of section 17-25-50. However, he did not raise this issue at trial; thus, we are bound by the laws of preservation.

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Pursuant to section 17-25-45:

(A) Notwithstanding any other provision of law, . . . , upon a conviction for a most serious offense as defined by this section, a person must be sentenced to a term of imprisonment for life without the possibility of parole if that person has one or more prior convictions for:

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S.C. Code Ann. § 17-25-45(A)(1) (Supp. 2008). Criminal sexual conduct with a minor is considered a most serious offense. S.C. Code Ann. § 17-25-45(C)(1) (Supp. 2008). Appellant's conviction for criminal sexual conduct with a minor resulting from the 1999 offense constituted his first "most serious" conviction. The trial court properly found the instant conviction for criminal sexual conduct with a minor in the second degree related to the 1998 incident constitutes his second "most serious" conviction requiring a sentence of LWOP.

Section 17-25-45 must be read in light of the requirements in section 17-25-50. See S.C. Code Ann. § 17-25-45(F) (Supp. 2008); State v. Gordon, 356 S.C. 143, 588 S.E.2d 105 (2003), overruled in part, Bryant v. State, 384 S.C. 525, 683 S.E.2d 280 (2009). Section 17-25-50 states:

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In addition, this case is clearly distinguishable from the facts in Gordon where the two crimes arose out of the same drug transaction, or in State v. Woody in which the two armed robbery convictions arose from the robbery of the clerk and the store during the same incident. State v. Woody, 359 S.C. 1, 596 S.E.2d 907 (2004). In this case, while the victims and circumstances were clearly similar such that the proof of the 1999 acts was strong proof of the 1998 acts, the offenses were not part of one general crime spree or one series of events such that application of the recidivist statute is precluded by section 17-25-50.

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CONCLUSION

For all of the foregoing reasons, Appellant requests that the panel rehear this matter and remove the above cited portions of the opinion.

Respectfully submitted,

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Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

WILLIAM M. BLITCH, JR.
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ATTORNEYS FOR APPELLANT

February 6, 2012

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Williamsburg County
Hon. George C. James, Circuit Court Judge

The State,

Respondent,

v.

Robert Troy Taylor,

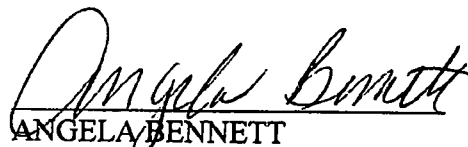
Appellant.

PROOF OF SERVICE

I, Angela Bennett, certify that I have served the within Petition for Rehearing En Banc by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Jeremy A. Thompson, Esquire
3614 Landmark Drive, Suite D
Columbia, South Carolina 29204

I further certify that all parties required by Rule to be served have been served.
This 6th day of February, 2012.



ANGELA BENNETT
Legal Assistant
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

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Hon. George C. James, Circuit Court Judge

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Robert Troy Taylor,

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BY:


William M. Blitch, Jr.

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ATTORNEYS FOR APPELLANT

February 10, 2012

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The State,

Respondent,

v.

Robert Troy Taylor,

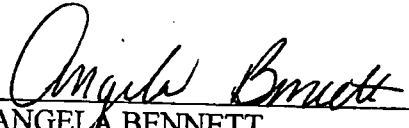
Appellant.

PROOF OF SERVICE

I, Angela Bennett, certify that I have served the within Amended Petition for Rehearing by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Jeremy A. Thompson, Esquire
Law Office of Jeremy A. Thompson, LLC
Post Office Box 12891
Columbia, South Carolina 29211

I further certify that all parties required by Rule to be served have been served.
This 10th day of February, 2012.


ANGELA BENNETT
Legal Assistant
Office of Attorney General
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Solicitor, Third Judicial Circuit

Sumter County Courthouse
Sumter, South Carolina 29150
(803) 436-2185

BY: 
William M. Blitch, Jr.

Office of the Attorney General
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(803) 734-3727

ATTORNEYS FOR APPELLANT

February 6, 2012

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Williamsburg County
Hon. George C. James, Circuit Court Judge

The State,

Respondent,

v.

Robert Troy Taylor,

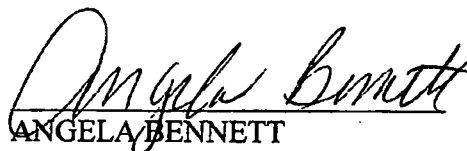
Appellant.

PROOF OF SERVICE

I, Angela Bennett, certify that I have served the within Petition for Rehearing En Banc by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Jeremy A. Thompson, Esquire
3614 Landmark Drive, Suite D
Columbia, South Carolina 29204

I further certify that all parties required by Rule to be served have been served.
This 6th day of February, 2012.



ANGELA BENNETT
Legal Assistant
Office of Attorney General
Post Office Box 11549
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(803) 734-3727

The South Carolina Court of Appeals

The State,

Respondent,

v.

Robert Troy Taylor,

Appellant.

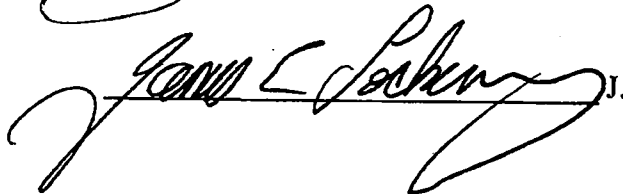
Judge George C. James, Jr.
Williamsburg County
Trial Court Case No. 2006-GS-45-00176

ORDER DENYING PETITION FOR REHEARING

PER CURIAM: After a careful consideration of the Petition for Rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded and hence, there is no basis for granting a rehearing.
It is, therefore, ordered that the Petition for Rehearing be denied.

 J.

 J.

 J.